

N.J.A.C. 8:59

NEW JERSEY ADMINISTRATIVE CODE

**TITLE 8.
DEPARTMENT OF HEALTH AND SENIOR SERVICES**

**CHAPTER 59
WORKER AND COMMUNITY RIGHT TO KNOW ACT**

Current through October 18, 1999

(See the New Jersey Register
and the New Jersey Administrative Code
for subsequent rule changes)



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Right To Know Program
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CHAPTER 59

WORKER AND COMMUNITY RIGHT TO KNOW ACT RULES

Authority

N.J.S.A. 34:5A-1 et seq., specifically 34:5A-30.

Source and Effective Date

R.1999 d.363, effective September 24, 1999.

See: 31 N.J.R.1589(a), 31 N.J.R. 3106(a).

Executive Order No. 66(1978) Expiration Date

Chapter 59, Worker and Community Right to Know Act Rules, expires on September 24, 2004.

Chapter Historical Note

Chapter 59, titled Workplace Hazardous Substances, was filed June 18, 1984 as R.1984 d.247. See: 16 N.J.R. 478(a), 16 N.J.R. 1519(a). Worker and Community Right to Know Act Rules, the current title, was filed as R.1984 d.441 and became effective October 1, 1984, incorporating the provisions of the Hazardous Substance List, amended and recodified. See: 16 N.J.R. 1869(a), 16 N.J.R. 1924(a), and 16 N.J.R. 2555(a). Chapter 59 was readopted as R.1989 d.543, effective September 29, 1989. See: 21 N.J.R. M3(a), 21 N.J.R. 3516(a).

Pursuant to Executive Order No.- 66(1978), Chapter 59 was readopted as R.1994 d.535. See: 26 N.J.R. 2888(a), 26 N.J.R. 4380(b). See, also, section annotations. Chapter 59 was readopted as R.1999 d.363. See: 31 N.J.R.1589(a), 31 N.J.R. 3106(a).

The following is a complete listing of employer groups who are currently covered by the Right to Know law:

SIC	Description
	AGRICULTURAL SERVICES
0782	Lawn and garden services
20	FOOD AND KINDRED PRODUCTS (ENTIRE GROUP)
21	TOBACCO PRODUCTS (ENTIRE GROUP)
22	TEXTILE MILL PRODUCTS (ENTIRE GROUP)
23	APPAREL AND OTHER TEXTILE PRODUCTS (ENTIRE GROUP)
24	LUMBER AND WOOD PRODUCTS (ENTIRE GROUP)
25	FURNITURE AND FIXTURES (ENTIRE GROUP)
26	PAPER AND ALLIED PRODUCTS (ENTIRE GROUP)
27	PRINTING AND PUBLISHING (ENTIRE GROUP)
28	CHEMICALS AND ALLIED PRODUCTS (ENTIRE GROUP)
29	PETROLEUM AND COAL PRODUCTS (ENTIRE GROUP)
30	RUBBER AND MISCELLANEOUS PLASTIC PRODUCTS (ENTIRE GROUP)
31	LEATHER AND LEATHER PRODUCTS (ENTIRE GROUP)
32	STONE, CLAY AND GLASS PRODUCTS (ENTIRE GROUP)
33	PRIMARY METAL INDUSTRIES (ENTIRE GROUP)
34	FABRICATED METAL PRODUCTS (ENTIRE GROUP)
35	INDUSTRIAL MACHINERY AND EQUIPMENT (ENTIRE GROUP)
36	ELECTRONIC AND OTHER ELECTRIC EQUIPMENT (ENTIRE GROUP)
37	TRANSPORTATION EQUIPMENT (ENTIRE GROUP)
38	INSTRUMENTS AND RELATED PRODUCTS (ENTIRE GROUP)
39	MISCELLANEOUS MANUFACTURING INDUSTRIES (ENTIRE GROUP)
	TRANSPORTATION BY AIR
4512	Air transportation, scheduled
4513	Air courier services
4581	Airports, flying fields, and airport terminal services

SIC	Description
46	PIPELINES, EXCEPT NATURAL GAS (ENTIRE GROUP)
	TRANSPORTATION SERVICES
4741	Rental of railroad cars
4783	Packing and crating
4785	Fixed facilities and inspection and weighing services for motor vehicle transportation
4789	Transportation services, not elsewhere classified
	COMMUNICATION
4812	Radiotelephone communications
4813	Telephone communications, except radiotelephone
4822	Telegraph and other message communications
49	ELECTRIC, GAS AND SANITARY SERVICES. (ENTIRE GROUP)
	WHOLESALE TRADE-DURABLE GOODS
5085	Industrial supplies
5087	Service establishment equipment and supplies
5093	Scrap and waste materials
	WHOLESALE TRADE-NONDURABLE GOODS
5122	Drugs, drug proprietaries, and druggists' sundries
5162	Plastics materials and basic forms and shapes
5169	Chemicals and allied products, not elsewhere classified
5171	Petroleum bulk stations and terminals
5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals
5181	Beer and ale
5182	Wines and distilled alcoholic beverages
5191	Farm supplies
5193	Flowers, nursery stock, and florists' supplies
5194	Tobacco and tobacco products
5198	Paints, varnishes, and supplies
5199	Nondurable goods, not elsewhere classified
	AUTOMOBILE DEALERS AND GASOLINE SERVICE STATIONS
5511	Motor vehicle dealers (new and used)
5521	Motor vehicle dealers (used only)
5541	Gasoline service stations
	PERSONAL SERVICES
7216	Dry cleaning plants, except rug cleaning
7217	Carpet and upholstery cleaning
7218	Industrial launderers
	AUTOMOTIVE REPAIR, SERVICES, AND GARAGES
7532	Top, body, and upholstery repair shops and paint shops
7533	Automotive exhaust system repair shops
7534	Tire retreading and repair shops
7536	Automotive glass replacement shops
7537	Automotive transmission repair shops
7538	General automotive repair shops
7539	Automotive repair shops, not elsewhere classified
	MISCELLANEOUS REPAIR SERVICES
7692	Welding repair
	HEALTH SERVICES
8062	General medical and surgical hospitals
8063	Psychiatric hospitals
8069	Specialty hospitals, except psychiatric
	EDUCATIONAL SERVICES
8211	Elementary and secondary schools
8221	Colleges, universities, and professional schools
8222	Junior colleges and technical institutes
8249	Vocational schools, not elsewhere classified
	ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT, AND RELATED SERVICES
8734	Testing laboratories
	STATE, COUNTY AND LOCAL GOVERNMENT, including any agency, authority, department, bureau, or instrumentality thereof

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NEW JERSEY ADMINISTRATIVE CODE

TITLE 8. DEPARTMENT OF HEALTH AND SENIOR SERVICES

CHAPTER 59 WORKER AND COMMUNITY RIGHT TO KNOW ACT

SUBCHAPTER 1. GENERAL INFORMATION

8:59-1.1 Authority

The regulations contained in this chapter are promulgated pursuant to the authority of the Worker and Community Right to Know Act, L. 1983, c. 315, N.J.S.A. 34:5A-1 et seq.

8:59-1.2 Purpose

(a) It is the purpose of these regulations to:

1. Provide a procedure and comprehensive program whereby residents of the State may gain access to information about hazardous substances in the workplace and the community;
2. Protect the public health, safety, and welfare;
3. Make it easier to monitor and detect any adverse health effects attributable to hazardous substances;
4. Enable individuals to detect and minimize effects of exposure to hazardous substances by making them aware of the identity of substances to which they are exposed and the early symptoms of unsafe exposure;
5. Provide individuals with the information to enable them to handle hazardous substances in a safe manner;
6. Provide individuals with information explaining the full range of the risks they face from exposure to hazardous substances so that they are in a position to make knowledgeable decisions;
7. Provide local health, fire, police, safety and other governmental officials with detailed information about the identity, characteristics, and quantities of hazardous substances used and stored in their communities in order to adequately plan for, and respond to, emergencies; and
8. Implement the New Jersey Worker and Community Right to Know Act, L.1983, c.315, N.J.S.A. 34:5A-1 et seq.

8:59-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

“Act” means the Worker and Community Right to Know Act, L.1983, Chapter 315, N.J.S.A. 34:5A-1 et seq.

“Article” means a manufactured item: (1) which is formed to a specific shape or design during manufacture; (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (3) which does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

“Carcinogen” means a substance that can directly, or after transformation, act to initiate or promote the development of malignant neoplasia.

“Certified Industrial Hygienist” means a person who has been certified by the American Board of Industrial Hygiene (ABIH), 4600 West Saginaw, Suite 101, Lansing, Michigan 48917-2737, (517) 321-2638.

“Certified Safety Professional” means a person who has been certified by the Board of Certified Safety Professionals (BCSP), 208 Burnwash Avenue, Savoy, Illinois 61874, (217) 359-9263.

“Chemical Abstracts Service number” means the unique identification number assigned by the Chemical Abstracts Service to chemicals.

“Chemical name” means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service rules of nomenclature.

“Common name” means any designation or identification such as a code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

“Community Right to Know Survey” means the reporting form which combines the chemical inventory reporting requirements of the Environmental Survey, formerly Part 1, and the Superfund Amendments and Reauthorization Act, Section 312.

“Consultant” means a person who is a technically qualified person, as specified in N.J.A.C. 8:59-1.3, who conducts Right to Know education and training programs for public employees, pursuant to N.J.A.C. 8:59-6 and 12, for the purpose of remuneration.

“Consulting agency” means an individual who meets, or a corporation or partnership which employs persons who meet, the criteria for a technically qualified person as specified in N.J.A.C. 8:59-1.3. and which develops and provides training objectives, outlines, teaching materials and evaluation tools for the Right to Know education and training program to public employers according to N.J.A.C. 8:59-6 and 12, for the purpose of remuneration. An individual consultant may also be a consulting agency at the same time.

“Container” means a receptacle used to hold a liquid, solid, or gaseous substance, including, but not limited to, bottles, pipelines, bags, barrels, boxes, cans, cylinders, drums, cartons, vessels, vats, and stationary or mobile storage tanks. “Container” shall not include process containers or building structures that are not capable of holding liquids, solids, or gases.

“Corrosive” means a substance, either liquid or solid, that can cause visible destruction or irreversible alterations in human skin at the site of contact.

“Council” means the Right To Know Advisory Council created pursuant to N.J.S.A. 34:5A-18.

“County health department” means a county health agency established pursuant to L.1975, c.329 (N.J.S.A. 26:3A2-1 et seq.), the office of a county clerk in a county which has not established a department, or a designated county lead agency.

“Department” and “Department of Health and Senior Services” means the New Jersey State Department of Health and Senior Services unless the context clearly indicates otherwise.

“Designated county lead agency” means a health agency or office of emergency management designated ‘by the county clerk to be responsible for conducting all county health department activities required by the Act in the county.

“Designated representative” means an employee of the department designated in writing by the Commissioner.

“Emergency responder” means a firefighter, police officer, emergency medical technician, hazardous materials technician, and other similar person who responds to a hazardous substance spill, fire or other incident involving the actual or potential release of a hazardous substance.

“Employee” shall have the same meaning as “public employee.”

“Employee representative” means a certified collective bargaining agent or attorney or individual or organization to whom a public employee gives written authorization to exercise his or her rights to request information pursuant to the provisions of the Act, or a parent or legal guardian of a minor or legally incompetent public employee.

“Employer” means the State and local governments, or any agency, authority, department, bureau or instrumentality thereof, except for the purposes of the Worker and Community Right to Know Fund, N.J.S.A. 34:5A-26.

“Environmental hazardous substance” or “EHS” means any substance designated by the Department of Environmental Protection in N.J.A.C. 7:1G-2.

“Environmental hazardous substance list” means the list of environmental hazardous substances developed by the Department of Environmental Protection pursuant to N.J.S.A. 34:5A-4 and N.J.A.C. 7:1G-2. The environmental hazardous substance list is incorporated into the Right to Know Hazardous Substance List.

“Environmental survey” means a written form, comprised of the Community Right to Know Survey, and the Release and Pollution Prevention Report, prepared by the Department of Environmental Protection and transmitted to an employer, on which the employer shall provide certain information concerning each of the environmental hazardous substances at the facility. The Community Right to Know Survey is incorporated into the Right to Know Survey.

“Explosive” means a chemical that causes a sudden almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

“Exposed” means that a public employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes potential (for example, accidental or possible) exposure.

“Facility” means the building, equipment and contiguous area at a single location used for the conduct of business and shall include any area where public or private employees are periodically assigned. Remote installed equipment that is not located in a building, which a public or private employee may occasionally repair, maintain, check for proper operation, expand, remove, or replace shall be considered part of the facility from which public or private employees are assigned to perform this work. Except for the purposes of education and training, N.J.S.A. 34:5A-13(c), labeling, N.J.S.A. 34:5A-14, and communication with the local fire department, N.J.S.A. 34:5A-25(b), “facility” shall not include a research and development laboratory.

“Flammable” means the susceptibility of materials to burn.

“Flashpoint” means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

1. Tagliabue Closed Tester for liquids with a viscosity of less than 45 Saybolt Universal Seconds at 100 degrees Fahrenheit (37.8 degrees Centigrade), that do not contain suspended solids and do not have a tendency to form a surface film under test; or
2. Pensky-Martens Closed Tester for liquids with a viscosity equal to or greater than 45 Saybolt Universal Seconds at 100 degrees Fahrenheit (37.8 degrees Centigrade), or that contain suspended solids, or that have, a tendency to form a surface film under test; or
3. Setaflash Closed Tester.

“Hazardous substance” means any substance, or substance contained in a mixture, included on the hazardous substance list developed by the Department of Health and Senior Services pursuant to N.J.S.A. 34:5A-5, introduced by an employer to be used, studied, produced, or otherwise handled at a facility. “Hazardous substance” shall not include:

1. Any article containing a hazardous substance if the hazardous substance is present in a solid form which does not pose any acute or chronic health hazard to a public or private employee or emergency responder exposed to it;
2. Any hazardous substance constituting less than one percent of a mixture unless the hazardous substance is present in an aggregate amount. of 500 pounds or more in a container at a facility;
3. Any hazardous substance which is a special health hazard substance constituting less than the threshold percentage established by the Department of Health and Senior Services for that special health hazard substance when present in a mixture. The threshold percentage for carcinogens, mutagens and teratogens shall be 0.1 percent;
4. Any hazardous substance present in the same form and concentration as a product packaged for distribution and use by the general public to which a public or private employee's exposure during handling is not significantly greater than a consumer's exposure during the principal use of the toxic substance;
5. Any fuel in a motor vehicle;
6. Tobacco or tobacco products;
7. Wood or wood products;
8. Foods, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers;
9. Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;
10. Materials gathered as evidence by a law enforcement agency, and maintained in an evidence locker or room;
11. Hazardous substances which are an integral part of a facility structure or furnishings; or
12. Products which are the personal property and are for the personal use of an employee.

"Hazardous substance fact sheet" means a written document prepared by the Department of Health and Senior Services for each hazardous substance except for generic categories, and transmitted by the Department to public employers, county health departments, county clerks, designated county lead agencies and the public pursuant to the provisions of the Act.

"Label" means a sign, emblem, sticker, or marker affixed to or stenciled onto a container listing the information required pursuant to N.J.S.A. 34:5A-14.

"Local Emergency Planning Committee" means a committee formed pursuant to Title III of the Federal Superfund Amendments and Reauthorization Act.

"Local fire department" means the fire department that has jurisdiction over the location of an employer's facility.

"Local police department" means the local police department or assigned State Police Troop that has jurisdiction over the location of an employer's facility.

"Mixture" means a combination of two or more substances not involving a chemical reaction.

"Mutagen" means an agent capable of disturbing the integrity of the hereditary mechanism of the cell or organism.

"One percent" means one percent by weight or volume.

"Person" includes an individual, corporation, company, partnership, firm, association, trust, estate, public or private institution, group, society, joint stock company, municipality, county, all political subdivisions of this State or any agency or instrumentality thereof including health departments, any agency or instrumentality of the State, and any legal successor, representative agent or agency of the foregoing.

"Pilot plant" means pilot facility as that term is defined at N.J.S.A. 13:1D.

"Potential exposure" includes exposure resulting from foreseeable emergencies such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which could result in an uncontrolled release of a hazardous substance into the workplace and exposure to a public employee.

"Private employee" means any paid full-time or part-time salaried, seasonal or hourly worker of a covered private employer.

"Process container" means a container, excluding a pipeline, the content of which is changed frequently; or a container of 10 gallons or less in capacity, into which substances are transferred from labeled containers, and which is intended only for the immediate use of the employee who performs the transfer; or a container on which a label would be obscured by heat, spillage or other factors; or a test tube, beaker, vial, or other container which is routinely used and reused. The contents of a container will be deemed to be "changed frequently" if the contents are changed at least once per shift. "Routinely used and reused" shall not include the situation where the same substances are continually being added and removed from the process container as in a continuous flow process.

"Providing" means the selling of a written program along with corresponding materials.

"Public employee" means any paid full-time or part-time salaried, seasonal or hourly worker of a covered public employer, and shall include volunteer firefighters and volunteers who work for a covered public employer.

"Public employer" means the State and local governments, or any agency, authority, department, bureau, or instrumentality thereof, except for the purposes of the Worker and Community Right to Know Fund, N.J.S.A. 34:5A-26.

"Reactive" means a material which can enter into a chemical reaction with other stable or unstable materials.

"Requestor" means any person who makes a request for the disclosure of the information for which a trade secret claim has been made.

"Research and development (R & D) laboratory" means a specially designated area, including pilot plants, used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which hazardous substances, in the case of public employers, or environmental hazardous substances, in the case of private employers, are used by or under the direct supervision of a technically qualified person. For the purpose of reporting on the Right to Know Survey and labeling, "primarily" means greater than 50 percent.

"Right to Know Enforcement Officer" means an employee of the Department of Health and Senior Services who enforces the Worker and Community Right to Know Act.

"Right to Know Hazardous Substance List" includes the workplace hazardous substance list and the environmental hazardous substance list.

"Right to Know Survey" includes the workplace survey, environmental survey, and the emergency services information survey.

"Shall" means a mandatory requirement.

"Special health hazard substance" means any hazardous substance on the special health hazard substance list.

“Special health hazard substance list” means the list of special health hazard substances developed by the Department of Health and Senior Services pursuant to N.J.S.A. 34:5A-5 for which an employer may not make a trade secret claim.

“Superfund Amendments and Reauthorization Act” or “SARA” means the Federal Act (PL 99-499) establishing the “Emergency Planning and Community Right to Know Act of 1986” at Title III (42 USC 11001).

“Technically qualified person” means:

1. For training purposes, a person who is a registered nurse, a certified safety professional, or a certified industrial hygienist, or has a bachelor’s degree or higher in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to hazardous substances;
2. For training purposes, a person who has completed at least 30 hours of hazardous materials training offered by the New Jersey State Safety Council, an accredited public or private educational institution, labor union, trade association, private organization or government agency and understands the health risks associated with exposure to hazardous substances, and has at least one year of experience supervising employees who handle hazardous substances or work with hazardous substances. The 30 hour requirement may be met by the combination of one or more hazardous materials training courses;
3. For training purposes, a person who has successfully completed a Department of Health and Senior Services approved instructor training course;
4. For purposes of teaching the recruit firefighting training course established by the Department of Community Affairs, a person who has fulfilled the requirements of Firefighter Instructor Level I as certified by the Department of Community Affairs;
5. For training purposes, a person who has received certification pursuant to N.J.A.C. 8:59-12; or
6. In a research and development laboratory, a person who has a bachelor’s degree in industrial hygiene, environmental science, chemistry, or a related field, and understands the health risks associated with exposure to the hazardous substances used in the research and development laboratory.

“Teratogen” means a substance which acts during pregnancy to produce a physical or functional defect in the conceptus or offspring.

“Threat to the health or safety of an employee” includes, but is not limited to, a substance which is flammable, explosive, corrosive, reactive, or possesses other physical properties which pose a threat to the health or safety of an employee; a substance which is known to cause cancer, genetic mutations, malfunctions in reproduction, acute or chronic disease, or other physiological malfunctions, in humans or animals.

“Trade secret” means any formula, plan, pattern, process, production data, information, or compilation of information, which is not patented, which is known only to an employer and certain other individuals, and which is used in the research and development or fabrication and production of an article of trade or service or of a mixture, and which gives the employer possessing it a competitive advantage over businesses who do not possess it, or the secrecy of which is certified by an appropriate official of the Federal government as necessary for national defense purposes. The chemical name and Chemical Abstracts Service number of a substance shall be considered a trade secret only if the employer can establish that the substance is unknown to competitors.

“Trade secret claim” means a written, request, made by an employer pursuant to N.J.S.A. 34:5A-15 and N.J.A.C. 8:59-3, to withhold the public disclosure of information on the grounds that the disclosure would reveal a trade secret.

“Trade secret docket number” means a code number temporarily or permanently assigned to the identity of information on the Community Right to Know Survey or Release and Pollution Prevention Report by the Department of Environmental Protection.

“Trade secret registry number” means a code number temporarily or permanently assigned to the identity of a substance in a container by the Department of Health and Senior Services pursuant to N.J.S.A. 34:5A-15 and N.J.A.C. 8:59-3.6.

“Workplace Hazardous Substance List” means the list of hazardous substances developed by the Department of Health and Senior Services pursuant to N.J.S.A. 34:5A-5. The Workplace Hazardous Substance List is incorporated into the Right to Know Hazardous Substance List.

“Workplace survey” means a written document, prepared by the Department of Health and Senior Services and completed by a public employer pursuant to the Act, on which the employer shall report each hazardous substance present at his facility. The workplace survey is incorporated into the Right to Know Survey.

8:59-1.4 Covered employers exempt from provisions of the law

(a) Any public employer whose Right to Know survey transmitted to the Department of Health and Senior Services indicates that no hazardous substances are present at the facility shall be exempt from the provisions of the Act for that facility, except for the requirement to annually update the Right to Know survey pursuant to N.J.A.C. 8:59-2, and except for the provisions of N.J.S.A. 34:5A-33 and N.J.A.C. 8:59-8 providing for enforcement of violations of the Act. Any residential dwelling which meets this condition, including those located in State, county and local parks, shall be exempt from meeting the requirements of N.J.A.C. 8:59-2.

(b) Any public employer exempted from the provisions of the Act pursuant to this section who transmits to the Department of Health and Senior Services an update of the Right to Know survey which indicates that a hazardous substance is present at the public employer’s facility shall immediately be subject to all the provisions of the Act.

8:59-1.5 Severability

If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of these rules and to this end, the provisions of these rules are declared to be severable.

SUBCHAPTER 2. RIGHT TO KNOW SURVEY - FOR PUBLIC EMPLOYERS

8:59-2.1 General provisions

(a) A Right to Know survey shall be prepared by the Department of Health and Senior Services and mailed to every public employer covered under the New Jersey unemployment insurance law who is also covered by the Act.

(b) Every public employer shall report every five years each hazardous substance listed on the Right to Know Hazardous Substance List which is present at its facility, beginning with the 1993 Right to Know Survey.

(c) In each of the four years between complete inventory surveys, every public employer shall report any new hazardous substances listed on the Right to Know Hazardous Substance List which are present at its facility.

(d) Within 90 days of receipt of a Right to Know Survey, or by July 15, whichever is later, a public employer shall complete and transmit the survey to the Department of Health and Senior Services; the county health department, county clerk, or designated county lead agency, of the county in which the employer’s facility is located; the local health department; the Local Emergency Planning Committee, the local fire department; and the local police department.

(e) The Department shall provide, upon request, a Spanish translation of a blank copy of the Right to Know survey to public employers; to county health departments, county clerks, or designated county lead agencies; and to the public.

8:59-2.2 Completion of Right to Know Survey

(a) A public employer shall report the hazardous substances which are present at its facility on the Right to Know Survey as follows:

1. Hazardous substances shall be reported by the common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number listed on the Right to Know Hazardous Substance List.
2. Hazardous substances which are special health hazard substances shall be reported on the Right to Know Survey in accordance with N.J.A.C. 8:59-10.1(b).
3. Hazardous substances other than special health hazard substances which are included in a mixture shall be reported on the Right to Know Survey if they constitute one percent or more of the mixture or if the substance is present in the aggregate of 500 pounds or more in a container at the facility regardless of the percentage of the substance in a mixture.
4. The name of the product in which the hazardous substance is contained shall be reported on the Right to Know Survey in alphabetical order. For each product, the type of container, greatest amount of the product in the prior 12 months (inventory), physical state of the product (unit), number of employees exposed or potentially exposed to the product, and the exact location of the product on site, shall be reported.
5. The name of the hazardous ingredients of a product shall be listed in alphabetical order underneath the product name. For each ingredient, the New Jersey Right to Know Hazardous Substance List Substance Number, Chemical Abstracts Service number (CAS), United States Department of Transportation Hazardous Materials Identification Number (DOT No.), percentage of the hazardous ingredients in the product (mixture), and the Special Health Hazard Codes of the ingredients, shall be reported.
6. The Right to Know Survey inventory pages shall be divided into large quantities of hazardous products at single locations and all other products, to be called small quantities. Large quantity is defined as a product present in a quantity greater than 100 pounds, gallons or cubic feet (inventory range codes 12 through 20). The Department shall have the discretion not to require the reporting of location of product for small quantities.

(b) In order for the Department to enforce compliance with the law, a public employer shall maintain records which indicate which hazardous substance components are present in which substances, mixtures, or intermediates that are identified by non-generic, generic or non-acceptable common or chemical names. Material safety data sheets should be used for this purpose.

(c) A public employer who wishes to claim a trade secret for the product trade name and chemical name or common name and Chemical Abstracts Service number of a hazardous or other substance shall follow the procedures set forth in N.J.A.C. 8:59-3 for making a trade secret claim on the Right to Know survey.

(d) A public employer shall report on the Right to Know survey any other information the Department determines to be reasonably necessary in order to carry out its responsibilities under the Act.

(e) If a public employer does not know the chemical name and Chemical Abstracts Service number of the components of a substance, mixture, or intermediate, at the time of receipt of the Right to Know survey, it shall make a good faith effort to obtain this information from the manufacturer or supplier. A good faith effort shall consist of two contacts by letter and/or documented phone call to the manufacturer or supplier. The public employer shall maintain this written documentation of its good faith effort.

(f) If a public employer is unable to obtain the chemical name and Chemical Abstracts Service number of all hazardous substances or the non-hazardous substances among the five most predominant components of the substance, mixture, or intermediate, it shall notify the Department on the form provided and attach it to the Right to Know survey submitted to the Department. The public employer shall include the identifying name or trade name of the substance, mixture or intermediate, and the manufacturer's name and address, and shall supply the department with any available corresponding material safety data sheet. If the public employer cannot identify the manufacturer's name it shall supply the name and address of the supplier.

(g) A public employer shall certify on the Right to Know survey that the information contained therein is true, accurate and complete to the best of its knowledge.

(h) If a public or private subcontractor stores hazardous substances at a public employer's facility, the public employer shall report these substances on the Right to Know survey.

(i) A public employer shall obtain material safety data sheets from manufacturers, suppliers and subcontractors for all products present at the public employer's facility, purchased for the public employer's facility, and brought on site at the public employer's facility.

8:59-2.3 Additional information requested by local agencies

(a) Any county health department, county clerk, or designated county lead agency, local police department, or local fire department may request from a public employer submitting a Right to Know survey to it further information concerning the survey, except for information claimed as trade secret on the survey form, and the public employer shall provide the additional information upon the request therefore. The public employer shall provide a response within 30 days.

(b) The public employer may require the county health department, county clerk, or designated county lead agency; local police department; or local fire department to sign an agreement protecting the confidentiality of any additional information provided pursuant to (a) above.

SUBCHAPTER 3. TRADE SECRETS

8:59-3.1 Authority

(a) This subchapter is promulgated pursuant to the Worker and Community Right to Know Act, L.1983, c.315, N.J.S.A. 34:5A-1 et seq., in particular, N.J.S.A. 34:5A-15 and 30, and N.J.S.A. 13:1D-9.

(b) This subchapter is a jointly adopted rule of the Department of Health and Senior Services and the Department of Environmental Protection (See N.J.A.C. 7:1G-6).

8:59-3.2 Purpose

(a) Trade secret claims will be filed or maintained by employers who are subject to the Act to maintain the confidentiality of information requested on the Right to Know Survey or the environmental survey and for the names of substances on container labels. It is the purpose of this subchapter to prescribe:

1. The procedures and guidelines for filing trade secret claims and maintaining trade secret information;
2. The information required by the department for determination of a trade secret claim;
3. The methods for maintaining the confidentiality and security of trade secret information;
4. The criteria for determination of a trade secret claim;
5. The procedure for requesting trade secret information;
6. The procedures for appeal of a determination of a trade secret claim; and
7. The procedures and guidelines for the disclosure of trade secret information.

8:59-3.3 Definitions

"Department" means, for purposes of this subchapter, both the New Jersey Department of Health and Senior Services and the New Jersey Department of Environmental Protection, unless otherwise indicated.

8:59-3.4 General provisions

(a) Except as provided in N.J.A.C. 8:59-3.15, the department shall not disclose any trade secret claim and supporting information, that is pending or has been approved.

(b) An employer shall report the information for which a trade secret claim is being made to the appropriate Department in accordance with N.J.A.C. 8:59-3.6 (7:1G-6.6), or maintain this information in accordance with the provisions of N.J.A.C. 8:59-3.6.

(c) On the Right to Know Survey and the environmental survey which the employer sends to county and local government agencies and which the employer retains on file at the facility for inspection by an enforcement officer or employees, the employer shall conceal or omit information claimed to be a trade secret, and shall note on the surveys where information has been claimed to be a trade secret.

(d) Any Right to Know Survey or environmental survey shall only be made available to the public with trade secret information concealed as required in subsection (c) above indicating pending or approved trade secret claim status.

(e) All documents containing the information claimed to be a trade secret and supporting information which are submitted, shall be submitted to the appropriate Department by certified mail return receipt requested, by personal delivery, or by other means which requires verification of receipt, the date of receipt, and the name of the person who receives the document at the Department. Such documents concerning the Right to Know Survey or labeling of containers shall be mailed or delivered to:

Manager, Right to Know Program
New Jersey Department of Health and Senior Services
PO Box 368
Trenton, NJ 08625-0368

Such documents concerning the environmental survey shall be mailed or delivered to:

Chief, Bureau of Chemical Release Information and Prevention
New Jersey Department of Environmental Protection
PO Box 405
Trenton, NJ 08625-0405

(f) The top of each page of any document containing the information for which a trade secret claim is being made and submitted pursuant to (e) above, shall display the word "CONFIDENTIAL" in bold type or stamp. If the documents submitted in support of the trade secret claim are to be kept confidential, they shall be similarly stamped.

(g) The outside of the envelope containing the information claimed to be a trade secret and any other envelope containing information in support of such claim submitted pursuant to (e) above, shall display the word "CONFIDENTIAL" in bold type on both sides. This envelope shall be enclosed in a plain envelope addressed for mailing.

(h) The department shall determine the validity of a trade secret claim when a request is made by any person for the disclosure of the information for which the trade secret claim was made and at any time that the department deems appropriate. The employer shall be notified before the department makes its determination and shall be provided 30 days to submit any information pursuant to N.J.A.C. 8:59-3.6 except when the employer has filed a trade secret claim prohibited by N.J.A.C. 8:59-3.5. The department shall make its determination on a trade secret claim in accordance with the criteria in N.J.A.C. 8:59-3.9. The department may approve a trade secret claim based on information provided pursuant to N.J.A.C. 8:59-3.6.

(i) The department may revoke an approved trade secret claim upon the receipt of new information from any person regarding the information previously submitted by an employer pursuant to N.J.A.C. 8:59-3.6. In the event of such revocation, N.J.A.C. 8-59-3.11 and 3.13 shall apply in the same manner as where the department rejects a trade secret claim.

(j) Nothing in these regulations shall be construed as prohibiting the incorporation of trade secret information into accumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons outside the department, not otherwise having knowledge of such information, to deduce from it the trade secret information, or the identity of the employer who supplied it to the department.

(k) Any failure by an employer to submit additional information relevant to the trade secret claim requested by the department or to allow inspection of its facility by the department for purposes of determining the validity of a trade secret claim shall constitute valid cause for denial of the trade secret claim.

(l) Compliance with this subchapter does not constitute satisfaction of Federal trade secret claim requirements for substances exceeding the Federal reporting thresholds of Title III of the Superfund Amendments and Reauthorization Act.

8:59-3.5 Prohibited claims

(a) A trade secret claim may not be made to the Department of Health and Senior Services for the following information:

1. The name and Chemical Abstracts Service number of any substance listed on the Special Health Hazard Substance List (N.J.A.C. 8:59-10), which meets the criteria established pursuant to N.J.A.C. 8:59-10;
2. Any information required to be publicly disclosed pursuant to any other act;
3. The following information requested on the Right to Know Survey:
 - i. Name of the employer;
 - ii. Location of the facility.

8:59-3.6 Procedure for filing trade secret claims and maintaining trade secret Information

(a) Reporting shall be done as follows:

1. A public employer who claims that disclosing information on a Right to Know Survey would reveal a trade secret shall list a trade secret registry number in place of the trade secret information in the Right to Know Survey to be distributed to the Department and all county and local agencies which are required by law, rule or regulation to receive the survey. The employer shall derive the registry number by adding a numeral beginning with "5000" at the end of its New Jersey Department of Labor employer identification number (EIN) separated by a dash and preceded by the words, "Trade secret registry #." See (b)2 below for examples. Each new trade secret claim shall be numbered consecutively. A second version of the Right to Know Survey which includes both the trade secret registry number and the trade secret information shall be filed with the Department along with the information required in (c) below, at the time of submission of the first survey.
2. A public employer may assign trade secret registry numbers to ingredients or products.

(b) Labeling shall be done as follows:

1. An employer who claims that labeling a container at his facility with the chemical name and Chemical Abstracts Service number of the hazardous or other substance in the container would reveal a trade secret, shall file a trade secret claim with the Department of Health and Senior Services by:
 - i. Submitting the trade secret information and the summary information required in (c) below; or

ii. Notifying the Department, in writing, that the employer intends to conceal the chemical name and Chemical Abstracts Service number of ingredients on a label for one or more ingredients or products. If a notification is filed, the employer shall certify that the trade secret information required in (b)4 below is being maintained, advise the Department of the trade secret registry numbers being assigned, and provide the Department with the name(s) and emergency phone number(s) of the employer representative(s) available in case of a public health or medical emergency, who is authorized by the employer to release trade secret information to the Department, or to others under such circumstances. The notification must be updated if the employer assigns a new employee to communicate with the Department regarding trade secrets, if the employer assigns a new emergency representative, or if the employer uses a new alpha and/or numeric numbering system for its trade secret registry numbers. One notification may be filed by an employer for the trade secret claims at each facility, and an employer with multiple facilities may file one notification for the trade secret claims at all of its facilities.

2. An employer shall derive the trade secret registry number to use on containers in either of two ways:

i. By adding a numeral beginning with "5000" at the end of its New Jersey Department of Labor employer identification number (EIN), separated by a dash, and preceded by the words "Trade Secret Registry #." Each new trade secret registry number shall be numbered consecutively. Examples of acceptable numbers include:

Trade Secret Registry Number 12345600-5000
Trade Secret Registry # 12345600-5000
TSRN 12345600-5000
NJ TSRN 12345600-5000; or

ii. By using its own alpha and/or numeric numbering system. If this option is chosen, the trade secret registry number shall be preceded by the words "New Jersey Trade Secret Registry Number." The acronyms and symbols "NJ," "TSRN," "TSR," "No.," and "#" may be used.

3. Trade secret registry numbers may be assigned to ingredients or products. If assigned to products, the employer must keep a list of those ingredients in the product which are considered trade secrets. Those ingredients in the product which are not trade secrets must be listed on the label in accordance with N.J.A.C. 8:59.

4. If an employer chooses to file a notification with the Department pursuant to (b)1 above, he shall maintain the trade secret information on site or at the corporate facility. This information shall include the chemical names and Chemical Abstracts Service numbers of all trade secret ingredients and products and the trade secret registry numbers that the employer has assigned to the ingredients and products.

5. A Right to Know enforcement officer shall be allowed to see the area where the trade secret information is kept and the system which has been established by the employer to maintain the trade secret information, but shall not be allowed to see the trade secrets unless authorized to do so by the employer or this Subchapter.

6. Trade secret numbers shall be affixed to containers in accordance with N.J.A.C. 8:59-3.17.

7. The Department may request complete trade secret information from an employer in order to make a determination on the validity of the trade secret claim or for public health or medical emergencies. The employer shall submit the information to the Department within 30 days of the request unless emergency circumstances apply, in which case the information shall be submitted within a shorter period of time as specified by the Department. Trade secret information submitted to the Department shall include the information required in (c) below.

8. Trade secret information which is currently on file with the Department will be returned to the employer upon request.

(c) An employer shall submit a summary of the following information at the time of submittal of the trade secret claim except when a notification is filed pursuant to (b) above:

1. Prior trade secret determinations concerning the trade secret claim by the Department, other agency or court, and a copy of such determination or reference to it;
2. Whether or not the information is known outside the employer's business;
3. Whether the information is patented;
4. What if any would be the harmful effects of its disclosure;
5. The period of time for which a trade secret designation is requested, if appropriate;
6. The ease or difficulty with which the information could be disclosed by analytical techniques, laboratory procedures, or other means;
7. Whether it is used in the research and development, or fabrication and production, of an article of trade or service;
8. Whether the trade secret is a formula, plan, pattern, process, production data, information, or compilation of information; and
9. The name(s) and emergency phone number(s) of the employer representative(s) available in case of a public health or medical emergency, who is (are) authorized by the employer to release trade secret information to the Department, or to others under such circumstances.

(d) The Department may at any time subsequent to the filing of a trade secret claim, request, in writing, the information listed in (d)I through 5 below. Within 30 days of such written request, an employer shall answer the request in writing. The Department may extend the period for submitting an answer for good cause shown.

1. Whether disclosure of the trade secret information would be likely to result in harmful effects on the employer's competitive position, and if so,

- i. What those harmful effects would be;
- ii. The competitive advantage the employer possesses over employers who do not possess it; and
- iii. The value of the information to the employer or the employer's competitor.

2. The extent to which the trade secret information is known by employees and others involved in the employer's business;
3. The extent of measures taken by the employer to guard the secrecy of the trade secret information;
4. The amount of effort or money expended by the employer in developing the trade secret information;
5. Any other relevant information to assist the Department in determining the validity of a trade secret claim.

(e) In addition to any information an employer is required to submit pursuant to (c) and (d) above, an employer may submit any other information relevant to the trade secret claim.

(f) An employer shall provide, as part of any trade secret claim or submission, the names of reference documents used as the basis for stated conclusions.

(g) An employer shall certify that its trade secret claim is true, accurate and complete.

(h) The Department may limit the length of a claim or submission and require that they be made on forms provided by the Department.

(i) An employer shall update trade secret information affecting a pending or approved trade secret claim within 60 days of the employer's knowledge or receipt of new pertinent information.

(j) At the time a public employer receives notification from the Department that a determination of a trade secret claim is being considered, this notification shall be posted on bulletin boards readily accessible to employees. Every public employer who employs persons whose native language is Spanish shall also post the notice in Spanish, such notice to be provided by the Department. The notice shall state for which survey the claim was made and shall invite any person to submit comments on the claim to the Department.

8:59-3.7 Confidentiality and security of trade secret information

(a) All trade secret information in support of a trade secret claim, pending or approved, shall be treated as confidential in accordance with (b) through (h) below.

(b) Information regarding trade secret claims, pending or approved, shall only be communicated in person or in writing, among persons authorized pursuant to N.J.A.C. 8:59-3.7 and 3.15, as well as between employers and such authorized persons. Said information shall not be communicated over telecommunications networks, including, but not limited to, telephones, computers connected by modems, or electronic mail systems. An exception may be made to this provision for emergencies pursuant to N.J.A.C. 8:59-3.15(g).

(c) Any document transmitted by the Department to the employer or any other authorized person, which contains information claimed to be a trade secret, shall be sent by certified mail return receipt requested, by personal delivery, or by other means which requires verification of receipt, the date of receipt, and the name of the person who receives the document.

(d) The Department shall communicate only with the employer's chief executive officer or his designated representatives, such designation to be made in writing, regarding the trade secret claim. The individual signing the trade secret claim submitted to the Department shall be considered the designated representative if no other communication is received from the employer.

(e) Any document prepared by the Department for the employer which contains information claimed to be a trade secret shall display the word "CONFIDENTIAL" in bold type to stamp on the top of each page. The envelope containing such document shall be addressed to the employer's chief executive officer or his designated representative and shall display the word "CONFIDENTIAL" in bold type on both sides. This envelope shall be enclosed in a plain envelope addressed for mailing.

(f) Except as provided in N.J.A.C. 8:59-3.15 (7:1G-6.15), no person other than the Commissioner and his designated representatives and administrative law judges and their necessary staff conducting hearings on trade secret claims, shall have access to information regarding a trade secret claim. All designated representatives shall be employees of the State. Designations shall be made in writing. Designated persons other than administrative law judges shall sign an agreement to protect the confidentiality of the information before access is granted. Administrative law judges shall have access to trade secret information as necessary to preside over pre-hearing activities, conduct the hearing, render an initial decision, and return the record to either the Department of Environmental Protection or the Department of Health and Senior Services pursuant to N.J.A.C. 1:21.

(g) All documents containing information regarding a trade secret claim shall be stored in a locked file or safe in a locked office in the Department. The file or safe and office containing such documents shall be locked when not being used by authorized persons.

(h) Persons authorized to use trade secret documents pursuant to (f) above shall do so in the office in which the trade secret documents are stored unless authorized to remove the documents by the Commissioner or his designated representative. All trade secret documents which are removed shall be returned to the office in which the documents are stored each day by the end of the regular workday. The Department shall maintain a log of persons who use documents containing trade secret information. The log shall include the person's name, title, the name of the document used, and the time of commencing and finishing use of the document. No trade secret document shall be delivered between offices by persons who are not authorized to handle said documents. Such documents

shall not be duplicated unless necessary for purposes of N.J.A.C. 8:59-3.15 or if the Department determines that it is absolutely necessary to carry out its responsibilities under the Act. If so duplicated, the document shall be marked as a copy, but treated as if it was an original document. The copy shall be destroyed immediately after completion of the use for which it was intended.

8:59-3.8 Decision-making agency on a trade secret claim

(a) The Department of Health and Senior Services is authorized to approve or deny a trade secret claim concerning:

1. Information reported on the Right to Know Survey.
2. Labeling a container with the chemical name and Chemical Abstract Service number of the substance in the container.

(b) The Department of Environmental Protection is authorized to approve or deny a trade secret claim concerning information reported on an environmental survey.

(c) Trade secret claims for labeling and reporting filed with both Departments shall be approved or denied jointly by the Department of Health and Senior Services and the Department of Environmental Protection.

8:59-3.9 Criteria for determination of the validity of a trade secret claim

(a) Any formula, plan, pattern, process, production data, information, or compilation of information shall be considered a trade secret if the employer establishes that its secrecy is certified by an appropriate official of the Federal government as necessary for national defense purposes, or if the employer establishes that:

1. It is not patented;
2. It is known only to the employer and certain other individuals;
3. It is used in the research and development or production of an article or of a mixture; and
4. It gives the employer possessing it a competitive advantage over businesses who do not possess it.

(b) The chemical name and Chemical Abstracts Service number of a substance shall be considered a trade secret only if the employer can establish that the substance is unknown to competitors, or is included in a formula or process that meets the criteria of (a) above.

(c) In determining whether a trade secret claim meets the requirements of (a) or (b) above, the Department shall consider information provided by the employer or any other person, including the information in (c)1 through 6 below:

1. The extent to which the information for which the trade secret claim is made is known outside the employer's business;
2. The extent to which the information is known by employees and others involved in the employer's business;
3. The extent of measures taken by the employer to guard the secrecy of the information;
4. The value of the information to the employer or the employer's competitor;
5. The amount of effort or money expended by the employer in developing the information;
6. The ease or difficulty with which the information could be disclosed by analytical techniques, laboratory procedures, or other means.

8:59-3.10 Request for trade secret information

(a) Any person may submit, at any time, a written request for the disclosure of information for which a trade secret claim is pending or has been approved, to the appropriate Department at the address provided in N.J.A.C. 8:59-3.4 (7:1G-6.4). The request shall state the requestor's name, address, and affiliation, and may include information concerning the validity of a pending or approved trade secret claim. The names of employees making requests for trade secret information on a Right to Know Survey or a label shall be kept confidential.

(b) A request for disclosure of an approved trade secret may be submitted only if accompanied by new significant information not previously submitted concerning the invalidity of the trade secret claim.

(c) The Department of Health and Senior Services shall render a decision on a request for the disclosure of trade secret information from a single employer within 120 days of receipt of the request and shall notify the requestor of its determination. The department may extend this deadline for an additional 120 days if the request involves a large number of substances.

8.59-3.11 Notification of determination of the validity of a trade secret claim

(a) Upon making a determination on the validity of a trade secret claim, the department shall notify the employer and the requestor of the determination by certified mail, return receipt requested. The notice shall state that the employer has 45 days from receipt of the department's determination to file a written request with the department for an administrative hearing on the determination.

(b) Within 15 days of receiving an approval of a trade secret claim from the Department, a public employer shall post on bulletin boards readily accessible to employees a notice of the determination. Every public employer who employs persons whose native language is Spanish shall also post the notice in Spanish, such notice to be provided by the Department.

8:59-3.12 (Reserved)

8:59-3.13 Appeal of determination

(a) If the department denies an employer's trade secret claim, the employer shall have 45 days from the receipt of the department's determination to file with the department a written request for an administrative hearing on the determination.

(b) Within 15 days after filing a request for an administrative hearing, a public employer shall post on bulletin boards readily accessible to employees a notice of the request. Every public employer filing a request shall send a copy of the notice to the county health department, county clerk, or designated county lead agency in which the employer's facility is located. Every public employer filing a claim who employs persons whose native language is Spanish shall also post a notice in Spanish. The notice shall state for which survey the request was made and the date of the request and shall invite any person to submit comments to the Department and provide testimony at the administrative hearing on the trade secret claim.

(c) If a request for an administrative hearing is made pursuant to (a) above, the department shall refer the matter to the Office of Administrative Law for a hearing thereon.

(d) Within 45 days of receipt of the administrative law judge's initial decision containing a recommendation on a matter referred to in (c) above, the Department shall affirm, reject, or modify the recommendation. The Department shall inform the employer of its decision on the administrative law judge's recommendation by certified mail return receipt requested. The Department's action shall be considered final agency action for purposes of the "Administrative Procedure Act," N.J.S.A. 52:14B-1 et seq., and shall be subject only to judicial review as provided in the Rules of Court.

(e) In the event that the department determines, pursuant to (d) above, that the trade secret claim is not valid, the employer shall have 45 days from receipt of the department's determination to notify the department, in writing, that it has filed to appeal the department's decision in the courts. If the employer does not so notify the department, the department shall disclose the information for which the trade secret claim was made in the manner set forth in N.J.A.C. 8:59-3.14.

(f) Special rules applicable to trade secret claim appeals are set forth at N.J.A.C. 1:21.

8:59-3.14 Disclosure of information determined not to be a trade secret

(a) After a trade secret claim has been denied and all appeals and the right to bring an appeal have been exhausted, the Department shall take the following action:

1. Modify the employer's Right to Know Survey or environmental survey, as the case may be, on file with the Department to substitute the omitted information for the trade secret docket or registry number and add the information wherever else appropriate; and
2. Direct the employer to modify the Right To Know Survey or environmental survey on file at his facility to include the information for which the trade claim was denied and add the information wherever else appropriate; to send modified copies of the revised Right to Know Survey or environmental survey to the appropriate Department and all county and local agencies that are required by law, rule or regulation to receive the survey containing this information; and to replace the trade secret registry number with the chemical name and Chemical Abstracts Service number on its fact sheets and container labels, if applicable.

8:59-3.15 Restricted access to trade secret Information retained by the Department

(a) Except as provided in (b) through (g) below and N.J.A.C. 8:59-3.7 or when so ordered by a court, no person shall willingly and knowingly disclose, and no person shall willingly and knowingly receive, trade secret information protected by this subchapter without the employer's written consent.

(b) An officer or employee of the State may be granted access to trade secret information protected by this subchapter, only in accordance with this section, upon a demonstration to the satisfaction of the department that such request is in connection with the official duties of the officer or employee under any law for the protection of public health.

1. An officer or employee of the State designated by the head of an agency may make a written request to the department for information on a pending or approved trade secret claim. Such request shall state:
 - i. Name, title, program, division, and department of the officer or employee;
 - ii. The officer or employee's need for the information and its connection with official duties,
 - iii. The reason why the information cannot be obtained from other sources; and
 - iv. The public health law for which the information is needed.
2. If the department proposes to release trade secret information to an officer or employee of the State, the department shall notify, in writing and by certified mail, return receipt requested, the employer who submitted the trade secret claim of the intent to release such information.

(c) A contractor of the State and its employees may be granted access to trade secret information protected by this subchapter if the Department determines that such disclosure is necessary for the completion of any work contracted for in connection with the implementation of the Act, and that the requirements of (c)1 through 3 below have been satisfied. Such approval shall restrict access to the trade secret information to persons approved by the Department. Employers shall be notified of this determination by the Department prior to disclosure of the trade secret information. A contractor shall not receive any trade secret information unless:

1. The contractor has submitted a plan to the Department which describes measures for adequately protecting trade secret information from unauthorized disclosure, and such plan has been approved by the Department;
2. The contractor has provided written documentation demonstrating, to the satisfaction of the Department, that the contractor maintains Professional Liability Insurance or suitable indemnity insurance and Comprehensive General Liability Insurance in forms and in amounts to be set by the Department; and
3. In addition to the requirement of (e) below, the contractor has signed an agreement developed by the Department, protecting trade secret information from unauthorized disclosure. The agreement shall include a provision whereby the contractor assumes liability for any damages to an employer resulting from the intentional or negligent release of trade secret information by the contractor and its employees.

(d) The department shall provide any information for which a trade secret claim is pending or has been approved to a physician or osteopath when such information is needed for medical diagnosis or treatment. The physician or osteopath who will receive confidential information shall be required to sign an agreement developed by the department protecting the confidentiality of the information disclosed. This agreement shall include a provision prohibiting the physician or osteopath from revealing the trade secret information to any person. Where feasible, the employer shall be notified prior to disclosure of the information.

(e) Any person granted access to trade secret information pursuant to N.J.A.C. 8:59-3.15 shall sign an agreement developed by the department protecting the confidentiality of the information prior to receipt of the information.

(f) Any person who receives trade secret information pursuant to this section shall take appropriate measures to protect the information from unauthorized disclosure which shall include, but not be limited to:

1. Keeping the information confidential from unauthorized persons;
2. Keeping any records containing trade secret information in a locked file cabinet or safe, when not in use;
3. Using the information only for the use approved by the department;
4. Not reproducing the trade secret information; and
5. Returning all material on which the trade secret information has been recorded to the department within 30 days or when finished using the information, whichever is sooner.

(g) For emergency public health or medical purposes, the department may waive the requirements of (b)1 (written request by State officer or employee), (b)2 (notice to employer prior to release of trade secret information), and (e) (signing a confidentiality agreement prior to receipt of trade secret information) above, and shall follow the procedures set forth in 1 and 2 below, if the department determines that waiver of said requirements is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment or is necessary for an emergency medical diagnosis or treatment by a physician or osteopath.

1. If trade secret information is conveyed verbally, in person or by telephone, the contents of a confidentiality agreement developed pursuant to (e) above, shall be read to the persons receiving such information.
2. Any person receiving oral or written trade secret information pursuant to this subsection shall sign a confidentiality agreement developed pursuant to (e) above, within 72 hours of receipt of such information.

8:59-3.16 Penalties for unauthorized disclosure of trade secret information

(a) Any officer or employee of the State, contractor of the State, physician or osteopath, or employee of a county health department, county clerk, or designated county lead agency, local fire department, or local police department, or any other person who has access to any confidential information, and who willingly and knowingly discloses the confidential information to any person not authorized to receive it, is guilty of a crime of the third degree.

(b) Disclosure of trade secret information by any contractor or agent of the department or its employees in violation of the Act shall constitute grounds for debarment, suspension, and disqualification from contracting with the department.

8:59-3.17 Labeling

(a) An employer shall affix a label with the trade secret registry number to the container in which a hazardous or other substance claimed as a trade secret is held in accordance with the requirements of N.J.A.C. 8:59-5 or N.J.A.C. 8:59-11, as appropriate. A trade secret claim shall be filed or maintained in accordance with N.J.A.C. 8:59-3.6 prior to affixing the label to the container.

(b) An employer shall affix a label with the trade secret registry number to a container received by an employer in which a substance claimed as a trade secret is held before employees open the container or within five working days of the container's arrival at the employer's facility, whichever is sooner, and shall file or maintain a trade secret claim in accordance with N.J.A.C. 8:59-3.6.

SUBCHAPTER 4. HAZARDOUS SUBSTANCE FACT SHEETS - FOR PUBLIC EMPLOYERS

8:59-4.1 General Provisions

(a) A hazardous substance fact sheet shall be developed by the Department of Health and Senior Services for each hazardous substance on the Right to Know Hazardous Substance List. This requirement does not include generic categories of substances.

(b) When a public employer files a trade secret claim, it may prepare its own hazardous substance fact sheet pursuant to N.J.A.C. 8:59-4.4(b) subject to the approval of the Department.

(c) The Department shall retain each hazardous substance fact sheet prepared either by the Department or a public employer for 30 years.

(d) Except for fact sheets prepared by public employers claiming a trade secret, the Department shall prepare a Spanish translation of each hazardous substance fact sheet.

(e) The Department shall make available to public employers, county health departments, county clerks, or designated county lead agencies, and the public a Spanish translation of each hazardous substance fact sheet.

(f) A public employer shall maintain and make available to employees material safety data sheets that have been developed or acquired for substances listed on the Right to Know Hazardous Substance List for which hazardous substance fact sheets have not been completed and for mixtures, in the same manner as hazardous substance fact sheets. The material safety data sheets shall be distributed in addition to hazardous substance fact sheets and not as a substitute. The material safety data sheets shall be made available to the department upon request.

8:59-4.2 Contents of hazardous substance fact sheet

(a) A hazardous substance fact sheet shall be a written document which includes, but is not limited to, the following information:

1. The chemical name, the Chemical Abstracts Service number, the trade name, and common names of the hazardous substance;
2. A reference to all relevant information on the hazardous substance from the most recent edition of the National Institute for Occupational Safety and Health's Registry of Toxic Effects of Chemical Substances;
3. The hazardous substance's solubility in water, vapor pressure at standard conditions of temperature and pressure, and flash point;

4. The hazard posed by the hazardous substance, including its toxicity, carcinogenicity, mutagenicity, teratogenicity, flammability, explosiveness, corrosivity and reactivity, including specific information on its reactivity with water;
5. A description, in non-technical language, of the acute and chronic health effects of exposure to the hazardous substance, including the medical conditions that might be aggravated by exposure, and any permissible exposure limits established by the federal Occupational Safety and Health Administration;
6. The potential routes and symptoms of exposure to the hazardous substance;
7. The proper precautions, practices, necessary personal protective equipment, recommended engineering controls, and any other necessary and appropriate measures for the safe handling of the hazardous substance, including specific information on how to extinguish or control a fire that involves the hazardous substance; and
8. The appropriate emergency and first aid procedures for spills, fires, potential explosions, and accidental or unplanned emissions involving the hazardous substance.

(b) A hazardous substance fact sheet shall be updated when, in the opinion of the department, significant new information becomes known.

8:59-4.3 Transmittal to employer

(a) Upon receipt of a completed Right to Know Survey from a public employer, the Department of Health and Senior Services shall transmit to that employer a hazardous substance fact sheet for each hazardous substance reported by the employer on the Right to Know Survey.

(b) The Department shall transmit to a public employer who was unable to list the hazardous substance components of a substance or mixture on the Right to Know Survey, a hazardous substance fact sheet for each hazardous substance contained in the substance or mixture when the Department obtains the names of the hazardous substances.

(c) Upon receipt of a Right to Know Survey which reports new hazardous substances, the Department shall supply the public employer with any necessary additional hazardous substance fact sheets.

(d) The Department shall transmit a Spanish translation for each hazardous substance reported by a public employer on the Right to Know Survey, upon request.

8:59-4.4 Trade secret claims

(a) If a public employer makes a trade secret claim for a substance on the Right to Know Survey pursuant to N.J.A.C. 8:59-3, the Department shall transmit to the public employer a hazardous substance fact sheet for the substance with the employers trade secret registry number for the substance listed in place of the name of the substance and the Chemical Abstracts Service number, unless the public employer notifies the department that it desires to prepare its own hazardous substance fact sheet in accordance with (b) below.

(b) A public employer may prepare a hazardous substance fact sheet for any substance for which a trade secret claim has been made in order to maintain the confidentiality of the trade secret.

1. The hazardous substance fact sheet prepared by a public employer shall contain the information set forth in N.J.A.C. 8:59-4.2(a)2 to 8. The information required in N.J.A.C. 8:59-4.2(a)3 may be expressed in descriptive terminology. The interpretation of data for a fact sheet prepared by a public employer shall follow the intent of and information contained in the corresponding fact sheet prepared by the Department, including information supplied in addition to that required by N.J.A.C. 8:59-4.2(a).

2. A public employer shall attach a standardized explanatory sheet prepared by the Department to every hazardous substance fact sheet prepared by the public employer.

3. A hazardous substance fact sheet prepared by a public employer shall be available for employee use in the same manner as a fact sheet prepared by the Department, and a copy shall be submitted to the Department within 30 days of receiving the Department's hazardous substance fact sheet. A hazardous substance fact sheet prepared by a public employer need only be distributed to employees on request and to the Department for review. In the case of trade secret claims made after return of the Right to Know Survey, a copy of the hazardous substance fact sheet pertaining to the claim shall be submitted to the Department within one month of submission of the trade secret claim.

4. The public employer shall list its trade secret registry number for the substance on the hazardous substance fact sheet.

5. A public employer shall prepare a Spanish translation of the hazardous substance fact sheet and submit a copy to the Department within 30 days of approval of its hazardous substance fact sheet.

(c) The Department shall review hazardous substance fact sheets prepared by public employers for compliance with N.J.A.C. 8:59-4.4(b). During the review by the Department, the public employer's hazardous substance fact sheets shall be made available for employee use in the same manner as a fact sheet prepared by the Department. After review and discussion, the Department shall require, if necessary, modifications to the fact sheets or substitution of the Department's fact sheet for the fact sheet developed by the public employer within 30 days of the Department's review.

SUBCHAPTER 5. LABELING CONTAINERS

8:59-5.1 General provisions

(a) The labeling provisions of this subchapter apply to public employers as defined in N.J.A.C. 8:59-1.3 and private employers as defined in N.J.A.C. 8:59-11.3.

(b) Every container at an employer's facility in which more than one percent of the contents of the container are unknown shall bear a label stating "Contents Unknown" or "Contents Partially Unknown", as appropriate, in addition to other labeling required by N.J.A.C. 8:59-5.

(c) Every container at an employer's facility shall bear a label indicating the chemical name and Chemical Abstracts Service number of all hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or the trade secret registry number assigned to the substance. This is commonly referred to as "universal labeling." Common names specified in N.J.A.C. 8:59-5.7 may be substituted for the chemical name of the substance. If an employer does not know the chemical name and Chemical Abstracts Service number of the components in a container, it shall make a good faith effort to obtain this information from the manufacturer or supplier. A good faith effort shall consist of two contacts by letter and/or documented phone call to the manufacturer or supplier. The employer shall maintain this written documentation of its good faith effort.

(d) Labels shall be affixed to containers before containers are opened or within five working days of the container's arrival at the facility, whichever is sooner. No employer may use the contents of a container unless the container is appropriately labeled. In warehouses, storage or transfer facilities associated with employers covered by this Act, where containers are not opened, labeling required by or consistent with United States Department of Transportation, 49 CFR 172.101 requirements, may be used.

(e) Laboratories or other facilities which receive containers with unknown materials or old pressurized gas cylinders with unknown contents for analysis of the contents shall label the containers as substances are identified. In the interim period until the contents are identified, these containers shall be labeled in accordance with N.J.A.C. 8:59-5.1(b).

(f) Containers of materials for which the employer does not know the contents, and the manufacturer is unknown or no longer in business, shall be labeled pursuant to the Act or the Federal Resource Conservation and Recovery Act. The employer shall be responsible for determining the components of the container and attaching appropriate labeling.

(g) When an employer receives information that allows it to identify the chemical name and Chemical Abstracts Service number of the components of any product in its facility, it shall label the appropriate containers pursuant to (c), (d) and (e) above within five working days of receiving this information.

(h) Reaction vessels are containers in which reaction or mixing takes place which do not meet the definition of process container. Reaction vessels shall contain labels which identify the substances which are added to the vessel and removed from the vessel. These labels may be placed on an adjoining wall or post in close proximity to the reaction vessel. Batch sheets or operating manuals which contain the information required for labeling in N.J.A.C. 8:59-5.1(a), (b), and (c) may be placed on an adjoining wall or post in close proximity to the reaction vessel to meet the requirement of this section.

(i) Containers which are 56.7 grams (two ounces) or smaller may be labeled by means of a code or number system if the code or number system will allow a public employee or emergency responder free and ready access at all times to a fact sheet which will provide the public employee or emergency responder with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number of the substance contained in the container, or the trade secret registry number assigned to the substance and, in the case of a public employee, allow access to this information without the permission or assistance of management, and be available to the public employee at close proximity to his or her specific job location or locations.

(j) An employer shall not be precluded from including on a label an appropriate hazard warning and the name and address of the substance manufacturer, importer, or other responsible party.

(k) Employers shall not remove or deface labels on incoming containers of substances, unless the container is immediately marked with the information required by this subchapter.

(l) Public employers who operate prisons or jails who believe that container labeling will constitute a security risk at the institution, may request a waiver of the labeling requirements of this subchapter. The waiver shall insure that the employees of the public employer receive all of the information about hazardous and other substances in containers that they are entitled to under the Act, although in a modified manner.

(m) In warehouses, storage and transfer facilities where containers are delivered stacked on skids, the containers remain on the skid until they are shipped out of the warehouse, storage or transfer facility, and it is not possible to get to all the containers without breaking down the skid, only those containers on the outside face of the skid and within reach of an employee need to be labeled in accordance with this subchapter. If the skid is shrink-wrapped, labels must be placed on the shrink-wrap on all four sides of the skid. If unlabeled containers are removed from the skid, they shall be immediately labeled.

(n) Containers that are packed within properly labeled larger containers need not be labeled in accordance with this subchapter until they are removed from the larger container.

(o) Retains are samples of products, raw materials, and intermediates that are stored by an employer for quality control and historical purposes. In the area such as a room, cabinet, or shelves where retains are stored, the labeling information required by this subchapter may be placed on a shelf or on a box that contains one or more retain samples. Retains that are removed from the storage area shall be labeled with the same labeling information that appears on the box or shelf. The labeling threshold based on container size set forth in N.J.A.C. 8:59-5.6 shall apply to retain sample containers.

(p) Batch samples are samples of product that are taken to a laboratory for quality control testing and that are tested during or after the batch operation. Batch samples may be labeled according to this subchapter by means of a label on a box or other container in which the sample is being held. Any samples that are removed from the laboratory shall contain labeling information as required by this subchapter. The labeling threshold based on container size set forth in N.J.A.C. 8:59-5.6 shall apply to batch sample containers.

(q) Containers in which products are shipped into or out of a facility that are not direct use containers may be labeled pursuant to the requirements of the United States Department of Transportation (USDOT) for hazardous materials being shipped. This requirement would require product or chemical name and hazard classification on the label if the product is hazardous and meets a minimum threshold. If USDOT regulations do not require a name or hazard classification on the shipping container, then none shall be required under this subchapter.

8:59-5.2 Pipelines

(a) Employers shall be required to label pipelines only at the valve or valves located at the point at which a substance enters a facility's pipeline system, and at normally operated valves, outlets, vents, drains and sample connections designed to allow the release of a substance from the pipeline. "Normally operated" means those valves, outlets, vents, drains and sample connections designed to allow the release of a substance from a pipeline which releases substances at least once during a 24 hour period or in connection with repairs or maintenance at least once per month. Where a series of multiple valves are in close proximity on a single pipeline connected to a single process container, only one valve out of the series need be labeled.

(b) Valves, outlets, vents and drains which control the emission or discharge of any solid, liquid, semi-solid or gaseous waste material from a facility shall be labeled. The information required on a label pursuant to the Resource Conservation and Recovery Act (RCRA) may be substituted for the information required by N.J.A.C. 8:59-5.1, even though the employer is not regulated by RCRA.

8:59-5.3 Research and development laboratories

(a) Alternative labeling system requirements follow:

1. Instead of labeling pursuant to this subchapter, employers who follow the procedure in (c) below and are approved by the Department as a research and development laboratory may label containers in the research and development laboratory by means of a code or number system. The code or number system must enable a public employee or emergency responder to readily make a cross reference to a hazardous substance fact sheet or documentary material retained on file by the employer at the facility which will provide the public employee or emergency responder with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number of the substance contained in the container, if it exists, or the trade secret registry number assigned to the substance. The labeling threshold based on container size set forth in N.J.A.C. 8:59-5.6 shall apply to research and development laboratories using the alternative labeling system.

2. The code or number system shall be designed to allow the public employee free and ready access at all times to the chemical name and Chemical Abstracts Service number of the substances in the container, shall be designed to allow the public employee access to this information without the permission or assistance of management, and shall be available to the public employee at close proximity to his or her specific job location or locations.

(b) OSHA Laboratory Standard requirements follow:

1. Instead of labeling pursuant to this subchapter or (a) above, employers who follow the procedure in (c) below and are approved by the Department as a research and development laboratory, may label containers in accordance with the Occupational Safety and Health Standard adopted by the United States Occupational Safety and Health Administration (OSHA), for private employers, and by the New Jersey Department of Labor, for public employers, entitled "Occupational Exposure to Hazardous Chemicals in Laboratories" (Laboratory Standard), at 29 CFR Part 1910, Section 1450 (1910.1450), promulgated on January 31, 1990, at 55 FR 3300, for private employers, and at N.J.A.C. 12:100-4.2, promulgated on June 21, 1993, at 25 N.J.R. 2688(b), for public employers.

2. In order for public employers to qualify for the labeling exemption in (b)1 above, all other requirements of the Laboratory Standard shall be complied with by the public employer including the chemical hygiene plan, information and training, and hazard identification. Such training shall be given to all public employees exposed or potentially exposed to hazardous chemicals in the research and development laboratory, including maintenance personnel and persons washing laboratory equipment.

3. In public workplaces, public employees shall have free and ready access at all times to the chemical name and Chemical Abstracts Service number of the substances in the containers through alternative information sources, shall have access to this information without the permission or assistance of management, and shall have this information available at close proximity to his or her specific job location or locations.

(c) An employer that wishes to obtain a research and development laboratory exemption shall comply with the following procedure:

1. For public employers, the employer shall submit to the Department of Health and Senior Services a completed research and development laboratory exemption application on forms approved by the Department.

2. For private employers, the employer shall submit to the Department of Environmental Protection (DEP) a completed research and development laboratory exemption application on forms approved by DEP.

3. The application forms required in (c)1 and 2 above shall contain the following information:

i. The name and address of the employer and facility (if different), location of the facility, and New Jersey Employer Identification Number of the employer;

ii. An 8½ x 11 map of the facility indicating the designated research and development area(s) of the facility. The map should indicate if research and development activities are limited to specific locations within the facility or if the entire facility is dedicated to research and development activities;

iii. The percentage of total work hours devoted to research and development activities in the designated area(s);

iv. Written verification from the local fire department stating that an acceptable communications program has been established with them to assist them in responding to emergencies at the research and development laboratory;

v. A description of the technical qualifications of each supervisor of the research and development laboratory area(s) or a certification by the supervisor of the research and development laboratory operations that each research and development laboratory is under the direct supervision of a technically qualified person; and

vi. A signed certification that the information contained in the research and development laboratory exemption application is true, accurate and complete.

4. Upon receipt of a completed research and development laboratory exemption application, the Department of Health and Senior Services and Department of Environmental Protection shall jointly make a determination to grant or deny the application. A letter will be sent by the Department of Health and Senior Services (to public employers) or the DEP (to private employers) to the applicant advising them of the approval or denial of the application. The research and development laboratory exemption shall become effective upon receipt by the employer of a letter from the Department of Health and Senior Services or DEP approving the application.

5. Employers who have received a research and development laboratory exemption as of August 2, 1993 need not reapply according to the procedure set forth in (c)1 through 4, above, and the terms and scope of existing exemptions are not affected by these amendments. Any changes which the employer wishes to make to the terms and scope of an existing exemption would require an application to be made pursuant to (c) 1 through 4, above, reflecting those changes.

8:59-5.4 Mixtures

If a container contains a mixture, an employer shall label the container according to N.J.A.C. 8:59-5.

8:59-5.5 Exceptions to labeling requirements; Federal and State labeling laws

(a) The labeling requirements of N.J.A.C. 8:59-5.1 shall not apply to containers affixed with labels pursuant to the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act, 61 Stat. 163 (7 U.S.C. 136 et al.).

(b) Containers labeled with shipping names of specific substances with identification numbers from the United States Department of Transportation's Hazardous Materials Table, 49 CFR 172.101, columns 2 and 4, may be substituted for the information required by N.J.A.C. 8:59-5.1 if the name on the container is identical to the chemical or common name on the Right to Know Hazardous Substance List.

(c) Containers containing waste material shall be labeled. The information required on a label for waste material pursuant to the Federal Resource Conservation and Recovery Act (RCRA) and the New Jersey Solid Waste Management Act (SWMA) may be substituted for the information required by N.J.A.C. 8:59-5.1, even though the employer is not regulated by RCRA or SWMA.

(d) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in such products (for example, flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and regulations issued under that Act, shall be exempt from the labeling requirements of N.J.A.C. 8:59-5 when they are subject to the labeling requirements under the Federal Food, Drug, and Cosmetic Act by the Food and Drug Administration and are in containers that are less than 55 gallons or 450 pounds.

1. All raw food materials, food additives, and finished food products intended for human or animal consumption regulated by Federal law shall be exempt from the labeling requirements of N.J.A.C. 8:59-5 regardless of the size of the container they are contained in.

2. A public employer shall make available to public employees on request, all hazardous substance fact sheets prepared by the Department relevant to the above products, including hazardous substance fact sheets on inactive ingredients as defined by the FDCA.

(e) Containers containing petroleum process streams shall be labeled. Labels for petroleum process streams may contain Chemical Abstracts Service numbers and their corresponding names included in the Toxic Substances Control Act Chemical Substances Inventory (EPA, May 1979) or in the Cumulative Supplements instead of the information required by N.J.A.C. 8:59-5.1. In addition, any substance in sources # 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, shall be indicated on the label. However, aliphatic hydrocarbons in sources # 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 other than n-hexane, need not be included on the label. A private employer shall maintain and make readily accessible to emergency responders a document that describes and identifies the contents of petroleum process streams.

(f) Electrical equipment containing dielectric fluid may be labeled according to Section 761 of the Federal Toxic Substances Control Act.

(g) Gas utility pipelines in transmission and distribution systems that meet the United States Department of Transportation's Minimum Federal Standards for Gas Lines may be labeled pursuant to those standards. A private employer shall maintain and make readily accessible to emergency responders a document that describes and identifies the contents of gas utility pipelines.

(h) Containers containing radioactive materials regulated by the Atomic Energy Act and the Nuclear Regulatory Commission may be labeled according to regulations promulgated by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act.

(i) Labels on shipping containers of controlled substances regulated by the Federal Controlled Substances Act and/or the Controlled Substances Import and Export Act which purposefully do not indicate the contents of the container as controlled substances in order to guard against storage and in-transit losses may be substituted for the informa-

tion required by N.J.A.C. 8:59-5.1.

(j) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for non-industrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) and regulations issued under that Act, shall be exempt from the labeling requirements of N.J.A.C. 8:59-5 when they are subject to the labeling requirements of the Federal Alcohol Administration Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco and Firearms.

8:59-5.6 Exclusions from the requirement to label

(a) Containers containing the following categories of hazardous or other substances shall be exempt from the requirements of labeling:

1. Any article containing a hazardous or other substance if the hazardous or other substance is present in a solid form and is not used in a manner which changes its physical form, and which does not pose any acute or chronic health hazard to a public or private employee or emergency responder exposed to it;
2. Any hazardous or other substance constituting less than one percent of a mixture unless the hazardous or other substance is present in an aggregate amount of 500 pounds or more in a container at a facility;
3. Any hazardous or other substance which is a special health hazard substance constituting less than the threshold percentage established by the Department of Health and Senior Services for that special health hazard substance when present in a mixture. The threshold percentage for carcinogens, mutagens and teratogens shall be 0.1 percent;
4. Any product which contains a hazardous or other substance in the same form and concentration as a product packaged for distribution and use by the general public, if the primary use container of the product is two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller.
 - i. The container thresholds in (a)4 above shall not apply to products that contain carcinogenic, mutagenic or teratogenic substances which are listed on the Special Health Hazard Substance List. (See N.J.A.C. 8:59-10.2.) For products that are below the two kilogram/two liter threshold and contain carcinogens, mutagens or teratogens, the chemical names and Chemical Abstracts Service numbers of all carcinogens, mutagens and teratogens shall be listed on the product's label. Other ingredients do not need to be listed on the label.
 - ii. The container thresholds in (a)4 above shall not apply to products that contain flammable, reactive or corrosive substances which are listed on the Special Health Hazard Substance List, and that meet the Special Health Hazard Substance List's criteria for flammability, reactivity or corrosivity. (See N.J.A.C. 8:59-10.2.) For products that are below the two kilogram/two liter threshold and meet the Special Health Hazard Substance List's criteria for flammability, reactivity or corrosivity, the chemical names and Chemical Abstracts Service numbers of the flammable, reactive or corrosive substances which contribute to the Special Health Hazard of the product, shall be listed on the product's label. Other ingredients do not need to be listed on the label.
 - iii. Consumer products both above and below this threshold shall be exempt from labeling, regardless of the presence of Special Health Hazard Substances, if the product is in the same form and concentration as a product packaged for distribution and use by the general public to which a public or private employee's exposure during handling is not significantly greater than a consumer's exposure during the principal use of the product.
5. Any fuel in a motor vehicle;
6. Tobacco or tobacco products;
7. Wood or wood products;

8. Food, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers;
9. Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;
10. Materials gathered as evidence by a law enforcement agency and maintained in an evidence locker or room;
11. Substances which are an integral part of a facility structure or furnishings; or
12. Products which are the personal property and are for the personal use of an employee.

(b) Process containers and directly associated piping whose contents change with the same frequency as the contents of the process containers, and sample valves from the process containers and directly associated piping, need not be labeled. This exclusion shall not apply to pipeline labeling requirements in N.J.A.C. 8:59-5.2, which regulates the labeling of valves, outlets, vents, drains and sample connections.

(c) A container which is removed from a larger container that is labeled in accordance with this subchapter, which is intended only for the immediate use of the employee who performs the removal, and which is used up during the employee's work shift, need not be labeled.

(d) Articles that are excluded by (a)1 above shall include solid articles that contain some amount of liquid or powder which, due to the design and use of the article, is not released from the article and thus does not cause any exposure to public employees and emergency responders. The following solid articles, which are examples and do not represent an exclusive list of excluded articles, meet the requirements of (a)1 above and are excluded from labeling:

1. Ammunition;
2. Bars of soap;
3. Chalk;
4. Pills and capsules;
5. Polaroid film;
6. Dry cell batteries;
7. Glue sticks;
8. Photocopier toners and developers in self-contained cartridges;
9. Grinding wheels;
10. Pens;
11. Pastels;
12. Sorbent sample tubes; and
13. Thermometers.

(e) Consumer products that meet the requirements of (a)4 above in all cases and are excluded from labeling include typewriter correction fluid (for example, "WiteOut," "Liquid Paper").

(f) All offices that are used for office work shall be exempt from labeling containers in that office. Rooms in an office building that are used for storage of cleaning supplies, printing, storage of maintenance materials, and other non-office work activity shall not be included in this exemption.

(g) All containers that are two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller shall be exempt from labeling.

1. The container thresholds in (g) above shall not apply to products that contain carcinogenic, mutagenic or teratogenic substances which are listed on the Special Health Hazard Substance List. (See N.J.A.C. 8:59-10.2.) For products that are below the two kilogram/two liter threshold and contain carcinogens, mutagens or teratogens, the chemical names and Chemical Abstracts Service numbers of all carcinogens, mutagens and teratogens shall be listed on the product's label. Other ingredients do not need to be listed on the label.

2. The container thresholds in (g) above shall not apply to products that contain flammable, reactive or corrosive substances which are listed on the Special Health Hazard Substance List, and that meet the Special Health Hazard Substance List's criteria for flammability, reactivity or corrosivity. (See N.J.A.C. 8:59-10.2). For products that are below the two kilogram/two liter threshold and meet the Special Health Hazard Substance List's criteria for flammability, reactivity or corrosivity, the chemical names and Chemical Abstracts Service numbers of the flammable, reactive or corrosive substances which contribute to the Special Health Hazard of the product, shall be listed on the product's label. Other ingredients do not need to be listed on the label.

(h) The threshold set forth in (g) above shall only apply to public employers if the public employer complies with the labeling requirements of the OSHA Hazard Communication Standard, 29 CFR 1910.1200, for all containers which are lower than this threshold. Even though public employers who choose to comply with the OSHA Hazard Communication Standard may not be required to label containers below the threshold according to the requirements of the Right to Know Act, the hazardous substances in these containers still have to be reported on the Right to Know Survey, Material Safety Data Sheets and Hazardous Substance Fact Sheets still have to be maintained in the Right to Know Central File for these chemicals, and public employees

8:59-5.7 Common name

(a) Only common names specified by the department may be substituted for required chemical names on labels.

(b) For hazardous substances listed on the Right to Know Hazardous Substance List:

1. The first name shall be considered the common name for the hazardous substance for purposes of labeling containers. If there is only one name listed for a hazardous substance on the Right to Know Hazardous Substance List, no other name may be used for purposes of labeling containers;

2. Any synonym (designated as "syn") listed on the Right to Know Hazardous Substance List shall be considered an acceptable common name for purposes of labeling containers; and

3. Generic names (designated as "gen") listed on the Right to Know Hazardous Substance List can only be used on container labels if there is a CAS number next to the generic name, except for Fuel Oil and Petroleum Oil which can be used without a CAS number. The phrase "Fuel Oil" should be used to label heating oil.

(c) For substances not listed on the Right to Know Hazardous Substance List, any synonym accepted by the Chemical Abstracts Service shall be considered the common name for the substance for purposes of labeling containers.

8:59-5.8 Labels

(a) A label shall be a sign, emblem, sticker or marker of a durable nature affixed to or stenciled onto a container.

(b) The printing on a label shall be easily readable and not obscured.

(c) The label shall be prominently displayed on the container.

8:59-5.9 Trade secret registry number

(a) An employer who files a trade secret claim pursuant to N.J.A.C. 8:59-3 shall affix or stencil the trade secret registry number onto each container containing a substance for which the trade secret claim was made, in accordance with the deadlines set forth in N.J.A.C. 8:59-5.1.

(b) Upon notification by the department that a trade secret claim has been denied, and after all appeals have been exhausted, an employer shall replace the trade secret registry number on the container with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number, pursuant to N.J.A.C. 8:59-3 within 10 days of notification.

8:59-5.10 Subcontractors

If a public or private subcontractor stores hazardous or other substances at a public employer's facility, the public employer shall ensure that the containers holding these substances are labeled in accordance with this subchapter.

SUBCHAPTER 6. EDUCATION AND TRAINING PROGRAM - FOR PUBLIC EMPLOYERS

8:59-6.1 General provisions

(a) Every public employer shall establish an education and training program for its employees, which shall be provided on paid employer time, except for volunteers, and shall:

1. Inform employees in writing and orally of the potential health and safety risks of the hazardous substances listed on the Right to Know Hazardous Substance List and the particular hazards of mixtures listed on material safety data sheets that contain one or more hazardous substances, to which they are exposed or are potentially exposed in the course of their employment; and

2. Train them in the proper and safe procedures for handling the hazardous substances under all circumstances.

(b) All education and training programs shall comply with N.J.A.C. 8:59-6.3.

(c) A public employer shall use a technically qualified person to conduct its education and training program.

(d) All public employers shall submit, attached to their Right to Know Survey, a certification that employees who are exposed or are potentially exposed to hazardous substances in the course of their employment, have received an education and training program which meets the requirements of N.J.A.C. 8:59-6.3 within the deadlines set forth in N.J.A.C. 8:59-6.2. Research and development laboratories shall certify by letter that all employees have received an education and training program which meets the requirements of N.J.A.C. 8:59-6.3 by January 1 of each year.

(e) Public employers shall maintain a written record of training given to employees. This record, at a minimum, shall describe the training, the date or dates on which it was given, the names and signatures of the employees, and the person conducting the training. These records shall be maintained by the public employer for the duration of each employee's employment and shall be made available to the Department upon request.

(f) Municipalities shall be responsible for providing the education and training program to the volunteer firefighters in their municipality.

8:59-6.2 Program for employers

(a) By December 31, 1985, a public employer shall have provided current employees with a complete education and training program. Volunteers shall have received an education and training program by October 1, 1990. Employees and volunteers shall receive update training biennially (every two years) thereafter.

(b) A public employer shall provide new or reassigned employees with an education and training program within the first month of employment or reassignment with the exception of volunteers who shall receive an education and training program within six months of becoming a volunteer. Employees and volunteers shall receive update training biennially (every two years) thereafter. Volunteer firefighters should not respond to emergencies involving hazardous materials during this six month period until they have received the required education and training.

(c) A public employer shall provide employees with an education and training program for hazardous substances which were unknown to the public employer, within three months of receiving the identity of and hazardous substance fact sheets for the hazardous substance components of a substance or mixture pursuant to N.J.A.C. 8:59-4.3(b).

(d) A public employer shall provide employees whose native language is Spanish and who cannot read or speak English above a 6th grade level, with an education and training program in Spanish, including written materials.

(e) Prior to entering an employment agreement with a prospective employee, a public employer shall notify the prospective employee of the availability of Right to Know surveys and appropriate hazardous substance fact sheets at the Department of Health and Senior Services; county health department, county clerk, or designated county lead agency; and employer's facility (including material safety data sheets at the facility) for the facility at which the prospective employee will be employed.

8:59-6.3 Contents of program

(a) The design of an acceptable education and training program shall include a definition of objectives including cognitive and behavioral goals, technically qualified instructors, and a method to evaluate the effectiveness of the program.

(b) An education and training program for employees shall contain, at a minimum, the following:

1. A general overview of occupational health including an explanation of:

- i. The common methods used to recognize occupational health and safety hazards;

- ii. The common methods used to measure and evaluate employee exposure to hazardous substances;

- iii. The common methods used to prevent and control employee exposure to hazardous substances including methods which 1) eliminate the source of the contaminant; 2) prevent dispersion of the contaminant; and 3) provide personal employee protection;

2. An explanation of the nature of and potential health and safety risks, including acute and chronic effects and symptoms of effects of exposure, of the hazardous substances to which the employees are exposed or potentially exposed in the course of their employment; as set forth in the hazardous substance fact sheets, material safety data sheets, and other sources. Hazardous substances with similar health and safety risks may be grouped together for purposes of explanation;

3. An explanation of the proper and safe procedures for handling, under all circumstances, the hazardous substances to which the employees are exposed or potentially exposed in the course of their employment, including the use and functioning of personal protective equipment, the policy and program for use of respirators, appropriate emergency treatment for exposure, procedures for cleanup of leaks and spills, and any special use conditions. This shall include an explanation about any operations in the work area which use hazardous substances. Employees who use personal protective equipment shall be given "hands-on" training in the proper use and functioning of personal protective equipment and the trainer shall disinfect the equipment before each reuse. Employees who use cleanup and firefighting equipment shall be given "hands on" training in the use of cleanup and firefighting equipment. If a respirator is required to be worn by an employee, the employer shall comply with the requirements of the Public Employees Occupational Safety and Health Act's (PEOSHA) Respiratory Protection Standard, 29 CFR Part 1910.134, in lieu of the provisions above in the paragraph pertaining to respirators. If employees need to use other personal protective equipment, the employer shall comply with

the appropriate PEOSHA Standard for Eye and Face Protection (29 CFR 1910.133), Head Protection (29 CFR 1910.135), Foot Protection (29 CFR 1910.136), Hand Protection (29 CFR 1910.138), and General Requirements (29 CFR 1910.132), in lieu of the provisions above in this paragraph pertaining to personal protective equipment;

4. Information regarding the provisions of the Worker and Community Right-to-Know Act:

- i. A general explanation of the Right to Know survey and the substances listed on the employer's Right to Know survey, including distribution of a sample page of a survey;
- ii. An explanation of the employer's obligation to label containers in its facility with chemical or common names and Chemical Abstracts Service numbers;
- iii. A general explanation of hazardous substance fact sheets and material safety data sheets and distribution of a sample fact sheet and material safety data sheet;
- iv. A description of the existence, location, and hours of operation of the central file maintained by the employer for storing the Right to Know survey and appropriate hazardous substance fact sheets and material safety data sheets;
- v. An explanation of the employee's right and relevant procedures to obtain a copy of the Right to Know survey, hazardous substance fact sheets and material safety data sheets from the employer, from the county health department, county clerk, or designated county lead agency, or from the Department of Health and Senior Services; to obtain copies from the county health department, county clerk, or designated county lead agency, and Department of Health and Senior Services in confidence; and the employer's obligation to supply, without cost, copies of the Right to Know survey and appropriate hazardous substance fact sheets to employees and, where appropriate and available, material safety data sheets, within five working days of a request;
- vi. An explanation of the employee's right to refuse to work with a hazardous substance for which a request was made for a Right to Know survey, appropriate hazardous substance fact sheet, the chemical name and Chemical Abstracts Service number of a substance in a container which is not labeled pursuant to N.J.A.C. 8:59-5, or the chemical name of a substance labeled with a common name, for the facility at which he or she is employed, and not honored within five working days of the request; the employee's right not to lose pay or forfeit any other privilege until the request is honored and not to be discharged, disciplined, penalized, or discriminated against for exercising any right under the law; and the appropriate agency to whom the employee would register a complaint regarding a violation of the law;

5. Informing and physically showing employees the location of the hazardous substance containers present at the facility with which they work and with which they are likely to work. Employees assigned plant-wide or to more than one location may be shown a representative work area where hazardous substance containers are present;

6. The opportunity for employees to ask questions related to hazardous substances and the New Jersey Worker and Community Right to Know Act; and

7. If a public employer chooses the option in N.J.A.C. 8:59-5.6(h) to label containers that are two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller, according to the labeling requirements of the OSHA Hazard Communication Standard, 29 CFR 1910.1200, the public employer shall explain to employees the Standard's requirements for labeling and other forms of warning.

(c) Every two years a public employer shall supply all employees with the Right to Know brochure and any other material designed and provided by the Department of Health and Senior Services, the Department of Environmental Protection, and the Department of Labor to inform employees of their rights under the Act at those facilities where hazardous substances are present. All new employees, regardless of potential exposure to a hazardous substance, shall receive the Right to Know brochure developed by the above-referenced departments, within the first month of employment.

(d) Every public employer shall post on bulletin boards or in other conspicuous areas in the facility any posters designed and provided by the Department to inform employees of their rights under the Act.

(e) Research and development laboratories shall provide their employees with appropriate hazardous substance fact sheets and available material safety data sheets as part of their education and training program.

(f) If the only hazardous substance to which an employee is exposed is toner or developer for a copying machine when the employee periodically replenishes the toner or developer in the machine, or gasoline for a motorized vehicle when the employee periodically fills the vehicle or a small can with gasoline, the public employer is not required to provide the full education and training program (including a technically qualified trainer) or biennial training to the employee if the public employer:

1. Provides the employee with the appropriate hazardous substance fact sheet and material safety data sheet on the toner or developer, or gasoline, as appropriate;
2. Reviews the hazardous substance fact sheet and material safety data sheet with the employee and explains its provisions;
3. Answers all questions by the employee about this information; and
4. Provides the employee with the Right to Know brochure developed by the Departments of Health, Environmental Protection, and Labor.

(g) An education and training program shall be given biennially (every two years) by a public employer to all employees who received the initial education and training set forth in (b) above, and who continue to be exposed or potentially exposed to products which contain hazardous chemical ingredients. The program shall be conducted by a technically qualified person. The contents of the program shall include, at a minimum:

1. Summary information about the Worker and Community Right to Know Act, including any changes in the rules. If a public employer chooses the option in N.J.A.C. 8:59-5.6(h) to label containers that are two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller, according to the labeling requirements of the OSHA Hazard Communication Standard, 29 CFR 1910.1200, the public employer shall explain to employees the Standard's requirements for labeling and other forms of warning; and
2. Chemical specific training for all new hazardous products and existing commonly used hazardous products. The Material Safety Data Sheets (MSDSs) and Hazardous Substance Fact Sheets (HSFSs) for these products shall be reviewed and the health effects, safety hazards, methods of controlling exposure, and appropriate work practices for the products, shall be explained. Any new information on the MSDSs and HSFSs for the commonly used hazardous products shall be reviewed. The program shall incorporate occupational health principles relevant to the employees while discussing these products. Hands-on training in the use of appropriate personal protective equipment need not be given if it was given during the initial education and training program.

8:59-6.4 Documentation for program

(a) A public employer must maintain the following documentation of all initial and biennial Right to Know education and training programs:

1. The date and location of the training program;
2. The name and qualifications of the instructor. This shall include a resume or, in the case of consultants who are certified pursuant to N.J.A.C. 8:59-12, proof of current certification;
3. Rosters of attendance which shall include the names and signatures of participants for each session. If the classroom and walkthrough sessions are given at different times, separate rosters must be maintained. The participant's title or job description shall also be listed. For emergency responders who have taken the State Police or other Department approved Hazardous Materials Emergency Responder Awareness and Operational training courses, certificates from these courses shall be sufficient proof of attendance at these courses;

4. Whether the course is an initial or biennial program;
5. The course objectives, which shall include both cognitive (learned) and behavioral goals;
6. A detailed course outline or detailed description of covered topics, which shall include the length of time for each major topic and which describes the methods of instruction of the topics;
7. If a videotape is used to cover required subjects, a brief written description of the videotape, including title, producer and the subject covered. In place of this description, a copy of the videotape may be kept with the education and training program records;
8. Copies of all materials handed out to participants; and
9. The methods used to evaluate the effectiveness of the program such as tests, exercises or written evaluations.

(b) The documentation required in (a) above shall be provided by a public employer, upon request, to a Right to Know Enforcement Officer.

(c) Rosters of attendance at initial and biennial education and training programs, dates and locations of the programs, and whether it is an initial or biennial program, shall be maintained by a public employer for the duration of the employee's employment. The balance of the material required in (a) above shall be maintained until a Right to Know Enforcement Officer reviews and approves the training programs during an inspection, after which time this material may be disposed of for programs conducted prior to the year of inspection.

8:59-6.5 Subcontractors

(a) When a public or private subcontractor produces, uses or stores hazardous substances at a public employer's facility in such a way that the employees of the public employer are or may be exposed to the hazardous substances, the public employer shall find out the identity of the hazardous substances and provide health hazard and protective procedure information about the substances to exposed and potentially exposed employees during the biennial education and training program or upon request of an employee or employee representative, whichever occurs sooner.

(b) If not part of the biennial training program, such information may be provided to exposed and potentially exposed employees in writing. The public employer shall provide exposed and potentially exposed employees with appropriate hazardous substance fact sheets or material safety data sheets, if requested.

8:59-6.6 29 CFR 1910.120(q) Hazardous Waste Operations and Emergency Response Training

(a) The Public Employees Occupational Safety and Health Act Standard, 29 CFR 1910.120(q) Hazardous Waste Operations and Emergency Response, requires training for emergency responders such as firefighters, both paid and volunteer, and police officers. This section will explain 29 CFR 1910.120(q)'s relationship to the requirements of the Worker and Community Right to Know Act.

(b) Firefighter training requirements are as follows:

1. Firefighters will be in compliance with Right to Know training requirements by taking the New Jersey Hazmat Emergency Response Course-Awareness, and the New Jersey Hazmat Emergency Response Course-Operational (using the manual dated May 10, 1990 or later), both developed by a committee under the auspices of the New Jersey State Police, Office of Emergency Management. In addition, firefighters should receive training on any hazardous materials in the firehouse which do not fit within the solid article or consumer product exemptions, if not already covered in other training. Training on the use of personal protective equipment must be given if not covered in other training. Instructors must provide documentation to the fire company that they are "technically qualified persons" and a signed attendance roster must be maintained at the firehouse.

2. Biennial (every two years) Right to Know training can be combined with the annual refresher training required by 29 CFR 1910.120(q), however, "demonstrated competency" will not be allowed as a substitute for Right to Know biennial training. A Right to Know brochure must be distributed to all firefighters during the biennial training course.

3. Awareness and Operational courses developed by other organizations may be used in place of the State Police program for Right to Know compliance upon submission to and approval by the Department of Health and Senior Services, Right to Know Program.

(c) All police officers are not required to receive Right to Know training, even though they may be required to take the New Jersey Hazmat Emergency Response Course-Awareness under 29 CFR 1910.120(q). Only those police officers who are exposed or potentially exposed to hazardous substances during the course of their work must receive Right to Know training. Examples of police work that are covered include working with photographic chemicals and giving breathalyzer tests. In the example of the breathalyzer test, since only one hazardous chemical is being used, abbreviated training as described in N.J.A.C. 8:59-6.3(f) can be given. Since ammunition meets the solid article exception, training does not have to be provided on this product.

SUBCHAPTER 7. EMPLOYEE AND PUBLIC ACCESS TO INFORMATION

8:59-7.1 Department of Health and Senior Services obligations

(a) The Department of Health and Senior Services shall maintain a file of all completed Right to Know surveys received from public employers and hazardous substance fact sheets prepared by the Department or by public employers.

(b) The Department shall retain hazardous substance fact sheets prepared by the Department and each Right to Know survey and hazardous substance fact sheet received from public employers, for 30 years.

(c) Any person may request in writing from the department a copy of a Right to Know survey for a facility or a copy of any hazardous substance fact sheet.

(d) The Department shall transmit any material requested pursuant to (c) above within 30 days of the request.

(e) Any request by an employee for material pertaining to the facility where he or she is employed made pursuant to (c) above shall be treated by the Department as confidential.

(f) Any person who requests the disclosure of information for which a trade secret claim has been made or approved, shall follow the procedures set forth in N.J.A.C. 8:59-3.10.

(g) The Department shall not distribute to any person, except as provided in N.J.A.C. 8:59-3.15, hazardous substance fact sheets prepared by public employers for the protection of trade secrets.

(h) The Department shall have the right to charge for making and supplying copies of any documents requested by any persons in accordance with N.J.S.A. 47:1A-1 et seq. The Department shall have the right to charge for copies of hazardous substance fact sheets requested by any person except for those sent to an employer in response to hazardous substances reported on the workplace survey and except for research and development laboratories covered by the Act.

8:59-7.2 Employer obligations

(a) Every public employer shall establish and maintain a central file at its facility in which it shall retain a completed Right to Know survey for the facility, appropriate hazardous substance fact sheets and material safety data sheets, and the Right to Know Hazardous Substance List.

(b) Every public employer shall post on bulletin boards in the facility readily accessible to employees, a notice of the availability of Right to Know surveys, hazardous substance fact sheets, material safety data sheets, and the Right to Know Hazardous Substance List, from the employer, from the Department of Health and Senior Services, from the Department of Environmental Protection, and from the county health department, county clerk, or designated county lead agency. A poster provided by the Department shall be used to meet the requirements of this subsection.

(c) A public employer shall, upon request, provide an employee whose native language is Spanish or employee representative, with a Spanish translation of a Right to Know survey, hazardous substance fact sheet and, if applicable, a material safety data sheet. Every employer with employees whose native language is Spanish shall post the notice required in (b) above in Spanish.

(d) A public employer shall, upon written request, provide an employee or employee representative with a copy of a Right to Know survey, appropriate hazardous substance fact sheets and, if applicable, material safety data sheets, at no cost. This information shall be provided as soon as possible but at the latest within five working days of the request. For a mixture, a public employer shall, upon written request, provide an employee or employee representative with a copy of the appropriate material safety data sheet.

(e) A public employer shall, upon written request, provide an employee or employee representative with the chemical name of a substance in a container labeled with a common name. This information shall be provided as soon as possible but at the latest within five working days of the request.

(f) A public employer shall, upon written request, provide an employee or employee representative with the chemical name and Chemical Abstracts Service number or trade secret registry number of all hazardous substances and the five most predominant substances contained in any container which is not labeled pursuant to the Act. This information shall be provided as soon as possible but at the latest within five working days of the request.

(g) Every research and development laboratory shall establish a communications program with the local fire department, which shall be designed to assist the fire department in adequately preparing to respond to emergencies at the research and development laboratory.

(h) If a public employer cannot supply a hazardous substance fact sheet or the chemical name and Chemical Abstracts Service number of a substance to an employee who requested it, because the employer has not received the hazardous substance fact sheet which the employer requested from the Department, or does not know the name of the substance or substances constituting the components of the product and has reported this to the Department, the public employer shall:

1. Inform the employee in writing that it has requested and not received the hazardous substance fact sheet from the Department, and provide the employee with the appropriate material safety data sheet; or

2. Inform the employee in writing that it has reported to the Department that it does not know the name of the substance or substances constituting the components of the product, and provide the employee with the appropriate material safety data sheet.

(i) No public employer shall discharge, cause to be discharged, or otherwise discipline, penalize, or discriminate against any employee because the employee or his or her employee representative has exercised any right established in the Act.

(j) The requirements of this section to supply hazardous substance fact sheets and material safety data sheets to employees or employee representatives shall also apply to hazardous substances brought into a public employer's facility (including surrounding land) by a public or private subcontractor.

8:59-7.3 County health department, county clerk, or designated county lead agency obligations

(a) Each county health department, county clerk, or designated county lead agency shall maintain a file of Right to Know surveys and hazardous substance fact sheets transmitted to it pursuant to the provisions of the Act.

(b) Right to Know surveys and hazardous substance fact sheets shall be made available for inspection by the public at no cost and at reasonable hours. If a fee is charged for copies of these documents, the fee shall not exceed the cost of reproducing the document.

(c) A county health department, county clerk, or designated county lead agency shall, upon request, provide to any person copies of the Right to Know survey and hazardous substance fact sheet in a Spanish translation provided by the Department of Health and Senior Services, Department of Environmental Protection, or an employer.

(d) Any request by an employee for material pertaining to the facility where he or she is employed made pursuant to (b) and (c) above shall be treated by the county health department, county clerk, or designated county lead agency as confidential.

8:59-7.4 Police and fire department obligations

No local police department or local fire department receiving Right to Know surveys pursuant to the provisions of the Act shall make the surveys available to the public. This prohibition shall not apply to distribution of surveys to local health departments, Local Emergency Planning Committees, or other units of local government.

8:59-7.5 Employee rights

(a) Any public employee or employee representative may request, in writing, from his or her employer, a copy of a Right to Know survey, hazardous substance fact sheet, or, where applicable, material safety data sheet, for the facility at which he or she is employed.

(b) A public employee shall have the right to refuse to work with a hazardous substance for which a request was made for a Right to Know Survey, appropriate hazardous substance fact sheet or material safety data sheet, and shall have the right to refuse to work with any substance for which a request was made for the chemical name and Chemical Abstracts Service number of a substance in a container which is not labeled pursuant to N.J.A.C. 8:59-5 or the chemical name of a substance labeled with a common name, for the facility at which he or she is employed, and not honored within five working days of the request, without loss of pay or forfeit of any other privilege until the request is honored, except in the case of (c) below.

(c) A public employee shall not have the right, pursuant to the Act, to refuse to work with a hazardous substance if an employer cannot supply a hazardous substance fact sheet to an employee who requested it because the employer has not received from the Department the hazardous substance fact sheet which the employer requested from the Department.

SUBCHAPTER 8. ENFORCEMENT

8:59-8.1 Violations

Whenever, on the basis of information available to him, the Commissioner of the Department of Health and Senior Services finds that an employer is in violation of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or any rule or regulation adopted pursuant thereto, the Commissioner of the Department of Health and Senior Services shall issue an order requiring the employer to comply, shall bring a civil action, shall levy a civil administrative penalty, or shall bring an action for a civil penalty, in accordance with N.J.S.A. 34:5A-31. The exercise of any of the remedies provided in this subchapter shall not preclude recourse to any other remedy so provided.

8:59-8.2 Civil administrative penalty

(a) The Commissioner of the Department of Health and Senior Services is authorized pursuant to N.J.S.A. 34:5A-31(a)(3) and (d) to impose a civil administrative penalty of not more than \$2,500 for each violation and additional penalties of not more than \$1,000 for each day during which a violation continues after receipt of an order from the Commissioner to cease the violation.

(b) The penalty which may be assessed for a violation is to be determined by application of factors indicative of the seriousness and type of the violation, as set forth below.

1. Seriousness:

i. Within the Commissioner's discretion, significant violations shall include, but not be limited to:

- (1) Filing by a public employer of false information on the Right to Know survey;
- (2) Failure by a public employer to conduct an education and training program;
- (3) Failure by a public employer to supply information requested by a county health department, county clerk, or designated county lead agency, local police department, or local fire department concerning the Right to Know survey.

ii. Within the Commissioner's discretion, major violations shall include, but not be limited to:

- (1) Failure by a public employer to return a completed Right to Know survey to the Department within the deadline set forth in N.J.A.C. 8:59-2;
- (2) Failure by a public employer to convey copies of the Right to Know survey to the county health department, county clerk, or designated county lead agency, local fire department, or local police department;
- (3) Omission by a public employer from the Right to Know survey of more than five percent of the hazardous substances present at the public employer's facility;
- (4) Failure to make a good faith effort to obtain the chemical names and Chemical Abstracts Service numbers of the components of a product which are unknown to the employer, from the manufacturer or supplier of the product;
- (5) Failure to supply the chemical name or common name and Chemical Abstracts Service number of a substance claimed to be a trade secret on the trade secret claim form which is filed with the Department;
- (6) Failure to file the trade secret claim form with the Department, if applicable;
- (7) Failure by a public employer to prepare a hazardous substance fact sheet for a trade secret substance in accordance with the requirements of N.J.A.C. 8:59-4.4(b);
- (8) Failure to label at least 95 percent of containers containing hazardous substances;
- (9) Failure to label at least 95 percent of all containers;
- (10) Failure to label at least 95 percent of containers in accordance with the requirements of N.J.A.C. 8:59-5;
- (11) Failure by a public employer to conduct an education and training program that complies with the requirements set forth in N.J.A.C. 8:59-6;
- (12) Failure by a public employer to provide public employees with material provided by the Department;

(13) Failure by a public employer to post posters provided by the Department to inform public employees of their rights under the law;

(14) Failure by a public employer to provide a public employee with a copy of a Right to Know survey, appropriate hazardous substance fact sheets, and, if applicable, material safety data sheets, as soon as possible but at the latest within five working days of the request;

(15) Failure to provide copies of employee health and exposure records requested by the Department;

(16) Failure to grant the Department access to employees in order to request permission to review their health and exposure records;

(17) Failure by a public employer to establish and maintain a central file which contains a Right to Know survey, appropriate hazardous substance fact sheets and material safety data sheets and Right to Know Hazardous Substance List;

(18) Failure by a public employer to provide a public employee with the chemical name of a substance in a container labeled with a common name or in a container which is not labeled pursuant to the provisions of N.J.A.C. 8:59-5, as soon as possible or at the latest within five working days of the request.

iii. Any other violations of the Act or these rules shall generally be considered to be non-serious violations. The Commissioner reserves the right to find other violations of the Act to be serious.

2. Type factor: The type factor reflects the circumstances of the violation and the responsibility of the violator. There are three types of violations:

i. Willful: A willful violation is one which is the result of some deliberate, knowing or purposeful action or inaction by the violator.

ii. Highly foreseeable: A highly foreseeable violation is one which, while not willful, was so clearly likely to have happened under all the circumstances that the violator can be charged with having known it was going to happen and failing to prevent it.

iii. Unintentional but foreseeable: An unintentional but foreseeable violation is one which the violator, by the exercise of reasonable diligence, could and should have foreseen and prevented.

3. The following presumptions shall be applied in the determination of the appropriate type factor:

i. An employer is presumed to have knowledge of all statutes and regulations applicable to its facility.

ii. Any violation known to the violator which continues for a period of 30 days or more without the violator taking steps to eliminate it, shall be presumed a willful violation.

4. Schedule of factor values: Penalties for violations shall be computed after assigning values to the Seriousness and Type Factors from the ranges set forth below:

i. Seriousness	Values
(1) Significant	1.00
(2) Major	1.00 to 0.40
(3) Minor	0.40 to 0

ii. Type:

(1) Willful	1.00
(2) Highly foreseeable	1.00 to 0.50
(3) Unintentional but foreseeable	0.50 to 0

5. Computation of penalty: The penalty for violations shall be computed as follows:

i. (Seriousness) x (Type) x (\$2,500) = Penalty for each violation.

ii. (Seriousness) x (Type) x (\$1,000) = Penalty for each day of violation after receipt of an administrative order to cease the violation from the date specified in the order for correction of the violation.

(c) Before any civil administrative penalty is imposed pursuant to this subchapter, the employer shall be notified by certified mail, return receipt requested, or by personal service. Such notice shall include:

1. A reference to the section of the Act, rule, regulation or order violated;
2. A concise statement of the facts alleged to constitute a violation;
3. A statement of the amount of the civil administrative penalties to be imposed; and
4. A statement of the employer's right to a hearing.

(d) The employer shall have 20 calendar days from receipt of the notice of imposition of a civil administrative penalty within which to deliver to the Commissioner a written request for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq. Subsequent to the hearing and upon finding that a violation has occurred, the Commissioner may issue a final order imposing the amount of the fine specified in the notice or such lesser amount as he may assess pursuant to the provisions on compromise of N.J.A.C. 8:59-8.2(h).

(e) If no hearing is requested, the notice of imposition of a civil administrative penalty shall become a final order upon expiration of the 20 calendar day period following receipt of the notice by the employer.

(f) Payment of the civil administrative penalty is due when a final order is issued or when the notice of imposition of a civil administrative penalty becomes a final order.

(g) The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in the Act, and the payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied.

(h) A civil administrative penalty imposed pursuant to this subchapter may be compromised by the Commissioner, in whole or in part, upon the posting by the employer of a performance bond in an amount and upon terms and conditions deemed satisfactory by the Commissioner.

8:59-8.3 Standing to sue

(a) Any person may bring a civil action in law or equity on his or her own behalf against any employer for a violation of any provision of the Act or any rule and regulation promulgated pursuant thereto, or against the Department of Health and Senior Services for failure to enforce the provisions of the Act or any rule or regulation promulgated pursuant thereto.

(b) The Superior Court shall have jurisdiction over the actions in (a) above. The court may award, whenever it deems appropriate, costs of litigation, including reasonable attorney and expert witness fees.

8:59-8.4 Right to enter employer's facility

(a) The Department of Health and Senior Services shall have the right to enter an employer's facility during the normal operating hours of the facility to determine the employer's compliance with the Act pursuant to N.J.S.A. 34:5A-29(a).

(b) Any local or county health department or regional health agency which has entered into an interagency agreement with the Department, shall have the right to enter an employer's facility to determine the employer's compliance with the provisions of the Act and rules and regulations adopted pursuant thereto, within the territory under its jurisdiction. The local or county health department or regional health agency shall conduct this inspection during the normal operating hours of the facility and in accordance with guidelines established by the Department of Health and Senior Services for inspections of employer's facilities. Inspection reports and recommendations of the local health officials shall be transmitted to the Department of Health and Senior Services. All enforcement action shall be taken by the Department of Health and Senior Services.

8:59-8.5 Employee health and exposure records

(a) Within 30 days of a request by the department, an employer shall provide the department with copies of employee health and exposure records, including those maintained for, and supplied to, the Federal government.

(b) When the department requests employee medical records that include the individuals' names, the employer shall, within 10 days, grant the department access to the employees, either in person or by supplying home addresses, in order to request permission to review their medical records.

(c) An employer who wishes to file a trade secret claim for the name of a substance on employee health and exposure records may do so. Said employer shall contact the department for instruction regarding the filing of such a claim.

(d) The use of the employee health and exposure records obtained pursuant to (a) and (b) above is not limited to the evaluation of an employee's health and exposure to hazardous substances. The information obtained will be used in epidemiological studies to determine the impact of hazardous substances on worker and community populations. The study of worker exposure to a hazardous substance indicates the health effect of that substance on a person, whether he is in the workplace or in the community. Such data from health and exposure records are necessary for determining the health effects to community residents from hazardous substances.

(e) The Commissioner's authority to obtain employee health and exposure records on behalf of the public's health is further set forth in N.J.S.A. 26:1A-16 and N.J.S.A. 26:1A-37.

8:59-8.6 Civil administrative order

(a) Whenever, on the basis of information available to him, the Commissioner of the Department of Health and Senior Services finds that an employer is in violation of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or any rule or regulation adopted pursuant thereto, the Commissioner of the Department of Health and Senior Services may, pursuant to N.J.S.A. 34:5A-31(a)(1) and (b), issue an order:

1. Specifying the provision or provisions of the Act, or the rule or regulation adopted pursuant thereto, of which the employer is in violation;
2. Citing the action which caused the violation;
3. Requiring the employer to comply with the provision of the Act or the rules and regulations adopted pursuant thereto of which the employer is in violation; and
4. Giving notice to the employer of the right to a hearing on the matter contained in the order.

(b) A civil administrative order shall be sent to an employer by certified mail, return receipt requested, or by personal service.

(c) The employer shall have 20 calendar days from receipt of the civil administrative order within which to deliver to the Commissioner a written request for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq. Subsequent to the hearing and upon finding that a violation has occurred, the Commissioner may issue a final order requiring the employer to comply with the provisions of the Act or the rules and regulations adopted pursuant thereto of which the employer is in violation, as specified in the civil administrative order.

(d) If no hearing is requested, the civil administrative order shall become a final order upon expiration of the 20 calendar day period following receipt of the order by the employer.

(e) The authority to issue a civil administrative order is in addition to all other enforcement provisions in the Act, and compliance with an administrative order shall not be deemed to affect the viability of any other enforcement provisions in connection with the violation for which the order was issued.

8:59-8.7 Civil action

The Commissioner of the Department of Health and Senior Services is authorized to commence a civil action in Superior Court for appropriate relief from a violation of the Act pursuant to N.J.S.A. 34:5A-31(a)(2) and (c). The relief may include an assessment against the violator for the costs of any investigation, inspection, or monitoring survey which led to the discovery and establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subchapter.

8:59-8.8 Civil penalty

(a) An employer who violates the Act, an order issued pursuant to N.J.A.C. 8:59-8.6, or a court order issued pursuant to N.J.A.C. 8:59-8.7, or who fails to pay in full a civil administrative penalty levied pursuant to N.J.A.C. 8:59-8.2, shall be subject, upon order of a court, to a civil penalty not to exceed \$2,500 for each day during which the violation continues, pursuant to N.J.S.A. 34:5A-31(a)(4) and (e).

(b) An employer who willfully or knowingly violates the Act, or who willfully or knowingly makes a false statement, representation, or certification in any document filed or required to be maintained under the Act, or who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device required to be maintained pursuant to the Act, is subject upon order of a court, to a civil penalty of not less than \$10,000 nor more than \$5,000 per day of violation, pursuant to N.J.S.A. 34:5A-31(a)(4) and (e).

(c) Any penalty imposed pursuant to this section may be collected, and any costs incurred in connection therewith may be recovered, in a summary proceeding pursuant to the "Penalty Enforcement Law," N.J.S.A. 2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the "Penalty Enforcement Law."

8:59-8.9 Inspection procedures

(a) Right to Know Enforcement Officers of the Department of Health and Senior Services are authorized to enter during normal operating hours any facility or other area where work is performed by a public or private employee of an employer; to inspect and investigate during normal operating hours within reasonable limits and in a reasonable manner, any such facility; and to review records required by the Act and rules and regulations promulgated pursuant thereto, and other records which are directly related to the purpose of the inspection.

(b) Upon a refusal to permit the Right to Know Enforcement Officer, in exercise of his official duties, to enter an employer's facility during normal operating hours, to inspect, to review records, or to question any employer, owner, operator, agent, or public or private employee, the Department shall take appropriate action, including compulsory process, if necessary. The term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

(c) Any permission by an employer to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, civil administrative order, or penalty under the Act.

(d) Right to Know Enforcement Officers shall have the authority to take or obtain photographs related to the purpose of the inspection.

(e) Right to Know Enforcement Officers shall have the authority to question privately any employer, owner, operator, agent or public or private employee of a facility concerning matters regarding the Worker and Community Right to Know Act to the extent they deem necessary for the conduct of an effective and thorough inspection.

8:59-8.10 Representatives of employers and public employees

(a) Right to Know Enforcement Officers shall be in charge of inspections and questioning of persons. A representative of the employer and for public employers, a representative authorized by the public employees shall be given an opportunity to accompany the Right to Know Enforcement Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Right to Know Enforcement Officer may permit additional employer representatives and for public employers additional representatives authorized by public employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and, for public employers, public employee representative may accompany the Right to Know Enforcement Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) If there is a disagreement as to who is the representative authorized by the employer and, for public employers, public employees to accompany the Right to Know Enforcement Officer on the inspection, the Right to Know Enforcement Officer shall make the final determination as to who is the authorized representative. The Right to Know Enforcement Officer shall have the authority to talk to any public or private employee of the facility during the inspection concerning matters regarding Right to Know compliance.

(c) If in the judgment of the Right to Know Enforcement Officer good cause has been shown why accompaniment by a third party who is not an employee of the public or private employer is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Right to Know Enforcement Officer during the inspection. Such third party may be a local emergency responder.

(d) Right to Know Enforcement Officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection.

8:59-8.11 Complaints by public or private employees

(a) Any public or private employee or representative of public or private employees who believe that a violation of the Act exists in any workplace where such public or private employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Department or a Right to Know Enforcement Officer. Upon the request of the person giving such notice, his or her name and the names of individual public or private employees referred to therein shall be kept confidential by the Department.

(b) Prior to or during any inspection of a workplace, any public or private employee or representative of public or private employees employed in such workplace may notify the Right to Know Enforcement Officer of any violation of the Act which he or she has reason to believe exists in such workplace.

8:59-8.12 Posting of orders, penalties and notices of contest

(a) Upon receipt of any civil administrative order, civil administrative penalty, court order, or civil penalty under the Act, a public employer shall immediately post such order or penalty, or a copy thereof, unedited, at or near each place an alleged violation referred to in the order or penalty occurred, and a private employer shall send a copy of

such order or penalty to the local fire department. Where, because of the nature of a public employer's operations, it is not practicable to post the order or penalty at or near each place of alleged violation, such order or penalty shall be posted, unedited, in a prominent place where it will be readily observable by all affected public employees.

(b) Each civil administrative order, civil administrative penalty, court order, or civil penalty or a copy thereof, shall remain posted until the violation has been abated, or for three working days, whichever is later.

(c) Any public employer who contests the provisions of a civil administrative order, civil administrative penalty, court order, or civil penalty, shall post such notice of contest next to the order or penalty being contested for as long as the order or penalty is required to be posted. A private employer shall send such notice of contest to the local fire department.

SUBCHAPTER 9. RIGHT TO KNOW HAZARDOUS SUBSTANCE LIST

8:59-9.1 General provisions

(a) Substances not included on the Right to Know Hazardous Substance List shall not be subject to the reporting provisions of the Act.

(b) The absence of any substance from the Right to Know Hazardous Substance List or the provision of any information by an employer to an employee or any other person pursuant to the provisions of the Act, shall not in any way affect any other liability of an employer with regard to safeguarding the health and safety of an employee or any other person exposed to the substance, nor shall it affect any other duty or responsibility of an employer to warn ultimate users of a substance of any potential health hazards associated with the use of the substance pursuant to the provisions of any law or rule or regulation adopted pursuant thereto.

8:59-9.2 Contents of the Right to Know Hazardous Substance List

(a) The Right to Know Hazardous Substance List consists of the hazardous substances listed in Appendix A, which includes:

1. Any substance or substance contained in a mixture regulated by the Occupational Safety and Health Administration, United States Department of Labor, under Title 29 Code of Federal Regulations (CFR) Part 1910-Occupational Safety and Health Standards for General Industry, Subpart Z-Toxic and Hazardous Substances.
2. Environmental hazardous substances contained in the "Environmental Hazardous Substance List" adopted by the New Jersey Department of Environmental Protection pursuant to the Act and codified in the New Jersey Administrative Code as N.J.A.C. 7:1G.
3. Additional substances which the Department has determined pose a threat to the health or safety of employees. The scientific evidence documenting the health or safety threat of the substances listed in Appendix A is contained in the reference sources listed in Appendix A.

(b) The Right to Know Hazardous Substance List identifies the Chemical Abstract Service number, a common name, the chemical name, the U.S. Department of Transportation Number and the source or sources which provides scientific evidence supporting selection of the substance to the list, for each substance.

8:59-9.3 Modification of the list

(a) The Department shall periodically review the Right to Know Hazardous Substance List and shall make any necessary revisions in accordance with the procedures set forth in (b) through (f) below. The list shall be revised by the department, if necessary, every three years unless the Department determines that special circumstances warrant an earlier revision.

(b) The Right to Know Hazardous Substance List shall be revised to reflect revisions to the following sources which are hereby incorporated by reference:

1. (Source # 1) Occupational Safety and Health Administration, 29 CFR 1910-Occupational Safety and Health Standards, Subpart Z-Toxic and Hazardous Substances, July 1, 1998.
2. (Source # 2) "1999 Threshold Limit Values (TLVs) for Chemical Substances in the Work Environment," American Conference of Governmental Industrial Hygienists (ACGIH), 1999.
3. (Source # 3) Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 49 CFR 172.101-Hazardous Materials Table, October 1, 1998.
4. (Source # 4) "NIOSH Compendium of Policy Documents and Statements," National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Senior Services and Human Services, No. 1992-100, 1992.
5. (Source # 5) "Eighth Annual Report on Carcinogens, Summary 1998," National Toxicology Program, National Institute of Environmental Health Sciences, U.S. Department of Health and Senior Services and Human Services, 1998.
6. (Source # 6) "Environmental Hazardous Substance List," New Jersey Department of Environmental Protection, N.J.A.C. 7:1G-2, as amended effective May 19, 1997 at 29 N.J.R. 2274(a).
7. (Source # 7) "Overall Evaluations of Carcinogenicity: An Updating of IARC Monographs Volumes 1 to 42," IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Supplement 7, Groups 1, 2A and 2B, International Agency for Research on Cancer (IARC), World Health Organization, 1987.
8. (Source # 8) Integrated Risk Information System (IRIS) Database, Human Health Assessment Group (HHAG), Office of Health and Environmental Assessment, U.S. Environmental Protection Agency (EPA), January 21, 1999.
9. (Source # 14):
 - i. "Prohibited and Restricted Use Pesticide List," New Jersey Department of Environmental Protection, N.J.A.C. 7:30-2.3, October 23, 1997.
 - ii. Pesticides classified for restricted use, United States Environmental Protection Agency, 40 CFR 152.175, July 1, 1998.
10. (Source # 15) "Fire Protection Guide to Hazardous Materials," contains NFPA 49 (Hazardous Chemicals Data), 325M (Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids), 491M (Manual of Hazardous Chemical Reactions) and 704 (Recommended System for the Identification of the Fire Hazards of Materials), National Fire Protection Association (NFPA), 1997.
11. (Source # 16) List of Acutely Toxic Chemicals, Chemical Emergency Preparedness Program, U.S. Environmental Protection Agency, December 1985.
12. (Source # 17) 1996 Emergency Response Guidebook, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 1996.
13. (Source # 18) List of Toxic Chemicals, Section 313, Title III-Emergency Planning and Community Right to Know, Superfund Amendments and Reauthorization Act of 1986 (SARA), Office of Pesticides and Toxic Substances. U.S. Environmental Protection Agency, 40 CFR 372.65, July 1, 1998.
14. (Source # 19) List of Extremely Hazardous Substances and Their Threshold Planning Quantities (TPQ), Section 302, Title III-Emergency Planning and Community Right to Know, Superfund Amendments and Reauthorization Act of 1986 (SARA), U.S. Environmental Protection Agency, 40 CFR 355-Emergency Planning and Notification, Appendix A, July 1, 1998.

15. (Source # 20) List of Hazardous Substances and Reportable Quantities (RQ), Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), U.S. Environmental Protection Agency, 40 CFR 302, Table 302.4, July 1, 1998.

16. (Source # 21) Hazardous Wastes from the P and U Lists, Resource Conservation and Recovery Act (RCRA), U.S. Environmental Protection Agency, 40 CFR 261.33, July 1, 1998.

17. (Source # 22) List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention (Table 1) and List of Regulated Flammable Substances and Threshold Quantities for Accidental Release Prevention (Table 3), Section 112(r), Federal Clean Air Act Amendments, U.S. Environmental Protection Agency, 40 CFR 68.130, Tables 1 and 3, July 1, 1998.

(c) The Department shall add to the Right to Know Hazardous Substance List any substance which it determines poses a threat to the health or safety of any employee or emergency responder and is based on documented scientific evidence.

(d) The Right to Know Advisory Council shall advise the Department of its recommendations for proposed revisions to the Right to Know Hazardous Substance List. Revisions other than those made pursuant to N.J.A.C. 8:59-9.3(b) above to the Right to Know Hazardous Substance List proposed by the Department shall be submitted to the Advisory Council for review and shall be published in the New Jersey Register as a notice of pre-proposal for a rule, pursuant to the requirements of N.J.A.C. 1:30-3.2.

(e) The Department shall consider relevant scientific information in evaluating a revision to the Right to Know Hazardous Substance List. For substances which cause health effects, this information may include, but is not limited to, short-term in vitro tests, animal toxicity tests, human epidemiological studies, clinical studies, and scientifically documented reports of symptoms or adverse health effects among employees. The Department may investigate the situation surrounding any studies or reports in order to obtain additional information regarding a revision.

1. All evidence from scientific studies shall be based on properly designed studies for endpoints indicating health effects in humans, for example, carcinogenicity, mutagenicity, neurotoxicity, organ damage and/or effects, physiologic changes.

2. For purposes of this subchapter, animal data is admissible and generally indicative of potential effects in humans. The absence of a particular category of studies shall not be used to prove the absence of risk.

3. Negative results generally indicate the absence of statistically positive results in appropriate studies. As all tests for toxicological effects have inherent insensitivities, negative results must be reevaluated in light of the limits of sensitivity of each study, its test design, and the protocol followed.

4. In evaluating different results among proper tests, as a general rule, positive results shall be given more weight than negative results for purposes of including a substance on the list. In each case, the relative sensitivity of each test shall be a factor in resolving such conflicts.

(f) Notice of proposed revisions to the Right to Know Hazardous Substance List which are not included in (b) above shall be published as necessary in the New Jersey Register as a proposed amendment to these rules in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. At least 30 days shall be allowed for public comment. A public hearing shall be held, if, in the Department's determination, there is significant public interest in the proposal. Notice of revisions made pursuant to (b) above shall be published in the New Jersey Register as a public notice and incorporated into the List.

(g) Employers will be notified of any revisions to the Right to Know Hazardous Substance List through the annual Right to Know survey transmittal.

SUBCHAPTER 10. SPECIAL HEALTH HAZARD SUBSTANCE LIST

8:59-10.1 General provisions

(a) The Special Health Hazard Substance List consists of hazardous substances on the Right to Know Hazardous Substance List which, because of their known carcinogenicity, mutagenicity or teratogenicity in humans, animals, or in vitro tests; or because of their flammability, reactivity/explosivity, or corrosivity, pose a special hazard to the health and safety of employees or the community.

(b) For purposes of reporting hazardous substances on the Right to Know survey form, the threshold percentage for special health hazard substances when present in a mixture shall be one-tenth of one percent for carcinogens, mutagens, and teratogens, and, for all other substances, one percent or if present in an aggregate amount of 500 pounds or more in a container at a facility.

(c) The absence of any substance from the Special Health Hazard Substance List shall not imply that a substance is not carcinogenic, mutagenic, teratogenic, flammable, reactive/explosive, or corrosive. Such absence, or the provision of any information by an employer to an employee or any other person pursuant to the provisions of the Act, shall not in any way affect any other liability of an employer with regard to safeguarding the health and safety of an employee or any other person exposed to the substance, nor shall it affect any other duty or responsibility of an employer to warn ultimate users of a substance of any potential special health hazards associated with the use of the substance pursuant to the provisions of any law or rule or regulation adopted pursuant thereto.

(d) An employer shall not make a trade secret claim on the Right to Know survey or for labeling containers for any carcinogenic, mutagenic or teratogenic substance which is listed on the Special Health Hazard Substance List and is present as a pure substance or in a mixture at a concentration of one-tenth of one percent or greater, or for any flammable, explosive, reactive, or corrosive substance which is listed on the Special Health Hazard Substance List and is present as a pure substance or at a concentration of one percent or greater in a mixture which meets the hazard criteria as defined in N.J.A.C. 8:59-10.2(a).

(e) All carcinogenic, mutagenic, and teratogenic substances listed on the Special Health Hazard Substance List shall be labeled with their chemical name or common name approved by the department, and their Chemical Abstracts Service number when present as a pure substance or in a mixture at a concentration of one-tenth of one percent or greater. Flammable, explosive, reactive, and corrosive substances which are listed on the Special Health Hazard Substance List shall be labeled according to the provisions of N.J.A.C. 8:59-5.

8:59-10.2 Contents of the Special Health Hazard Substance List

(a) The Special Health Hazard Substance List consists of hazardous substances with the following properties:

1. Carcinogen-Carcinogens which have met the criteria established by the International Agency for Research on Cancer (IARC) or the National Toxicology Program (NTP) or the Environmental Protection Agency's Health Hazard Assessment Group (HHAG) or the criteria of the National Institute for Occupational Safety and Health (NIOSH) for benzidine based dyes, are included on the Special Health Hazard Substance List.

i. IARC categorizes its list of carcinogens into three groups:

(1) Group 1 - The chemical, group of chemicals or occupational exposure is carcinogenic to humans. This category was used only when there was sufficient evidence from epidemiological studies to support a causal association between the exposure and cancer.

(2) Group 2 - The chemical, group of chemicals or occupational exposure is probably carcinogenic to humans.

(3) Compounds from Group 3 were not included on the Right to Know or Special Health Hazard Substance Lists.

ii. NTP categorizes its list of carcinogens into two groups:

(1) Group 1 includes substances or groups of substances that are known to be carcinogenic, which includes those substances for which the evidence from human studies indicates that there is a causal relationship between exposure to the substance and human cancer.

(2) Group 2 includes substances or groups of substances that may reasonably be anticipated to be carcinogens, which includes those substances for which there is limited evidence of carcinogenicity in humans or sufficient evidence of carcinogenicity in experimental animals.

iii. HHAG includes substances which demonstrate substantial or strong evidence of carcinogenicity in humans or animals, based upon positive human epidemiological studies, or a statistically significant increase in malignant tumors or an increase in benign tumors of a progressive nature in at least one animal species. Evidence of carcinogenicity in short-term bioassays was used only as supportive evidence.

iv. NIOSH considers benzidine-based dyes as potential human carcinogens based on the rapid induction of tumors in animals and the demonstration of bladder cancer in workers exposed to benzidine-based dyes. In addition, evidence exists to indicate that benzidine-based dyes are converted to the carcinogen benzidine in laboratory animals and in humans.

2. Mutagen - Those mutagens which have at least three positive results in at least two of three test systems measuring gene or chromosome mutation or changes in ploidy (number of chromosomes per cell) are included on the Special Health Hazard Substance List. When two of the positive results are for the same genetic effect, they have to be derived from systems of different biological complexity.

3. Teratogen - Those teratogens for which there is sufficient evidence to suspect that they may be teratogenic in humans are included on the Special Health Hazard Substance List. Sufficient evidence of teratogenicity is epidemiological evidence of teratogenicity in humans or positive teratogenic evidence in at least two different animal species.

4. Flammable - The flammability hazards of materials are classified according to their susceptibility to burning. Pure substances which meet the United States Department of Transportation's (DOT) criteria for flammability set forth in 49 CFR 173 or the National Fire Protection Association's (NFPA) criteria for flammability in the third and fourth degrees of hazard set forth in "Standard Systems for the Identification of the Fire Hazards of Materials." No. 702-1975 are included on the Special Health Hazard Substance List. Special health hazard substances contained in mixtures shall be considered to be special health hazard substances unless the flammability hazard of the mixture does not meet the criteria set forth below for flammability. This documentation shall be made available to the department upon request.

i. DOT criteria:

(1) Flammable liquid - A flammable liquid means any liquid having a flash point below 100 degrees Fahrenheit (37.8 degrees Centigrade), except for any mixture having one component or more with a flash point of 100 degrees Fahrenheit (37.8 degrees Centigrade) or higher, that makes up at least 99 percent of the total volume of the mixture (49 CFR Part 173.115).

(2) Flammable compressed gas - Any compressed gas shall be classed as "flammable gas" if any one of the following occurs:

(A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure.

(B) Using the Bureau of Explosives' Flame Projection Apparatus, the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening (49 CFR Part 173.300).

(3) Flammable solid - A flammable solid is any solid material, other than one classed as an explosive, which is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. Included in this class are spontaneously combustible and water-reactive materials (49 CFR Part 173.150).

ii. NFPA criteria:

(1) Flammability-Fourth degree - Materials which will rapidly or completely vaporize at atmospheric pressure and normal ambient temperature or which are dispersed in air, and which will burn readily. This degree should include:

Gases;

Cryogenic materials;

Any liquid or gaseous material which is a liquid while under pressure and having a flash point below 73 degrees Fahrenheit (22.8 degrees Centigrade) and having a boiling point below 100 degrees Fahrenheit (37.8 degrees Centigrade) (Class 1A flammable liquids.)

Materials which on account of their physical form or environmental conditions can form explosive mixtures with air and which are readily dispersed in air, such as dusts of combustible solids and mists of flammable or combustible liquid droplets.

(2) Flammability-Third degree - Liquids and solids that can be ignited under almost all ambient temperature conditions. Materials in this degree produce hazardous atmospheres with air under almost all ambient temperatures or, though unaffected by ambient temperatures, are readily ignited under almost all conditions. This degree should include:

Liquids having a flash point below 73 degrees Fahrenheit (22.8 degrees Centigrade) and having a boiling point at or above 100 degrees Fahrenheit (37.8 degrees Centigrade) and those liquids having a flash point at or above 73 degrees Fahrenheit (22.8 degrees Centigrade) and below 100 degrees Fahrenheit (37.8 degrees Centigrade). (Class 1B and Class 1C flammable liquids);

Solid materials in the form of coarse dusts which may burn rapidly but which generally do not form explosive atmospheres with air;

Solid materials in a fibrous or shredded form which may burn rapidly and create flash fire hazards;

Materials which burn with extreme rapidity, usually by reason of self-contained oxygen;

Materials which ignite spontaneously when exposed to air.

5. Reactive and/or explosive - The reactivity or explosivity of materials are ranked according to their susceptibility to release energy. Pure substances which meet the National Fire Protection Association's criteria for reactivity/explosivity in the second, third, and fourth degrees of hazard set forth in "Standard Systems for the identification of the Fire Hazards of Materials", No. 704-1975, are included in the Special Health Hazard Substance List. Special health hazard substances contained in mixtures shall be considered to be special health hazard substances unless the reactive and/or explosive hazard of the mixture does not meet the criteria set forth below for reactivity/explosivity. This documentation shall be made available to the department upon request.

i. Reactivity-Fourth degree - Materials which in themselves are readily capable of detonation or of explosive decomposition or explosive reaction at normal temperatures and pressures. This degree should include materials which are sensitive to mechanical or localized thermal shock at normal temperatures and pressures.

ii. Reactivity-Third degree - Materials which in themselves are capable of detonation or of explosive decomposition or explosive reaction but which require a strong initiating source or which must be heated under confinement before initiation. This degree should include materials which are sensitive to thermal or mechanical shock at elevated temperatures and pressures or which react explosively with water without requiring heat or confinement.

iii. Reactivity-Second degree - Materials which in themselves are normally unstable and readily undergo violent chemical change but do not detonate. This degree should include materials which can undergo chemical change with rapid release of energy at normal temperatures and pressures or which can undergo violent chemical change at elevated temperatures and pressures. It should also include those materials which may react violently with water or which may form potentially explosive mixtures with water.

6. Corrosive - Pure substances which meet the United States Department of Transportation's criteria for corrosivity set forth in 49 CFR Part 173.240 are included on the Special Health Hazard Substance List. Special health hazard substances contained in mixtures shall be considered to be special health hazard substances unless the corrosivity hazard of the mixture does not meet the criteria set forth below for corrosivity. This documentation shall be made available to the department upon request.

A corrosive material is a liquid or solid that causes visible destruction or irreversible alterations in human skin tissue at the site of contact. A material is considered to be destructive or to cause irreversible alteration in human skin tissue if when tested on the intact skin on the albino rabbit by the technique described in Appendix A to 49 CFR Part 173.240, the structure of the tissue at the site of contact is destroyed or changed irreversibly after an exposure period of four hours or less (49 CFR Part 173.240). The term corrosive shall not refer to action on inanimate surfaces.

(b) The Special Health Hazard Substance List consists of the hazardous substances listed in Appendix B.

8:59-10.3 Modification of the list

The Special Health Hazard Substance List shall be modified in accordance with the procedures set forth in N.J.A.C. 8:59-9.3, and with the use of other reference sources deemed appropriate by the department.

SUBCHAPTER 11. COMMUNITY RIGHT TO KNOW; LABELING, PRIVATE EMPLOYERS

8:59-11.1 Authority

This subchapter is promulgated pursuant to the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., in particular, N.J.S.A. 34:5A-14 and 30, and the case of *New Jersey Chamber of Commerce v. Hughey*, 868 F.2d 621 (3rd Cir.), *cert. den.*, 492 U.S. 920 (1989).

8:59-11.2 Purpose

(a) Private employers covered by the Worker and Community Right to Know Act are preempted from being subject to the workplace requirements of the Act, but must comply with the community provisions of the Act.

(b) In order to comply with the community provisions of the Act, a private employer must:

1. Submit a completed Community Right to Know Survey to the Department of Environmental Protection pursuant to N.J.A.C. 7:1G; and
2. Label all containers in the workplace pursuant to this subchapter (N.J.A.C. 8:59-11).

8:59-11.3 Definitions

(a) All of the definitions in N.J.A.C. 8:59-1.3 shall apply to this subchapter except for the definition of “employer.”

(b) For this subchapter and for N.J.A.C. 8:59-1, 3, 5, 8, 9 and 10, “employer” shall also mean any person or corporation, regardless of whether he pays employees, in the State, engaged in business operations having a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within the following Major Group Numbers, Group Numbers, or Industry Numbers, as the case may be:

Major Group Number 07 (Agricultural Services), only Industry Number 0782-Lawn and Garden Services;

Major Group Numbers 20 through 39 inclusive (manufacturing industries);

Major Group Number 45 (Transportation by Air), only Group Numbers 451-Air Transportation, Scheduled, And Air Courier Services, and 458-Airports, Flying Fields, and Airport Terminal Services;

Major Group Number 46 (Pipelines, Except Natural Gas);

Major Group Number 47 (Transportation Services), only Group Numbers 473-Arrangement of Transportation of Freight and Cargo, 474-Rental of Railroad Cars, and 478-Miscellaneous Services Incidental to Transportation;

Major Group Number 48 (Communication), only Group Numbers 481-Telephone Communications, and 482-Telegraph and Other Message Communications;

Major Group Number 49 (Electric, Gas and Sanitary Services);

Major Group Number 50 (Wholesale Trade-Durable Goods), only Industry Numbers 5085-Industrial Supplies, 5087-Service Establishment Equipment and Supplies, and 5093-Scrap and Waste Materials;

Major Group Number 51 (Wholesale Trade, Non-durable Goods), only Group Numbers 512-Drugs, Drug Proprieties and Druggist's Sundries, 516-Chemicals and Allied Products, 517-Petroleum and Petroleum Products, 518-Beer, Wine and Distilled Alcoholic Beverages, and 519-Miscellaneous Non-durable Goods;

Major Group Number 55 (Automobile Dealers and Gasoline Service Stations), only Group Numbers 551-Motor Vehicle Dealers (New and Used), 552- Motor Vehicle Dealers (Used only), and 554-Gasoline Service Stations;

Major Group Number 72 (Personal Services), only Industry Numbers 7216 -Dry Cleaning Plants, Except Rug Cleaning, 7217-Carpet and Upholstery Cleaning, and 7218-Industrial Launderers;

Major Group Number 75 (Automotive Repair, Services, and Parking), only Group Number 753-Automotive Repair Shops;

Major Group Number 76 (Miscellaneous Repair Services), only Industry Number 7692-Welding Repair;

Major Group Number 80 (Health Services), only Group Number 806-Hospitals;

Major Group Number 82 (Educational Services), only Group Numbers 821-Elementary and Secondary Schools, and 822-Colleges, Universities, Professional Schools, and Junior Colleges, and Industry Number 8249-Vocational Schools, Not Elsewhere Classified; and

Major Group Number 87 (Engineering, Accounting, Research, Management, and Related Services), only Industry Number 8734-Testing Laboratories.

8:59-11.4 General information

The general information provisions of N.J.A.C. 8:59-1 shall apply to this subchapter, except for N.J.A.C. 8:59-1.4.

8:59-11.5 Trade secrets on labels

Trade secret claims to maintain the secrecy of hazardous substances and the five most predominant substance ingredients on container labels shall be filed in accordance with the procedures set forth in N.J.A.C. 8:59-3, which shall govern all trade secret label claims.

8:59-11.6 Labeling containers

(a) The provisions of N.J.A.C. 8:59-5, which regulate the labeling of containers and pipelines, shall apply to this subchapter.

(b) By March 31, 1990, every container at a private employer's facility shall bear a label indicating the chemical name and Chemical Abstracts Service number of all environmental hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or the trade secret registry number assigned to the substance. This is commonly referred to as "universal labeling." Common names specified in N.J.A.C. 8:59-5.7 may be substituted for the chemical name of the substance.

8:59-11.7 Enforcement

The provisions of N.J.A.C. 8:59-8, which regulate enforcement of this chapter, shall apply to this subchapter.

8:59-11.8 Right to Know Hazardous Substance List

The provisions of N.J.A.C. 8:59-9, which regulate the Right to Know Hazardous Substance List, shall apply to this subchapter.

8:59-11.9 Special Health Hazard Substance List

The provisions of N.J.A.C. 8:59-10, which regulate the Special Health Hazard Substance List, shall apply to this subchapter.

SUBCHAPTER 12. CERTIFICATION OF CONSULTANTS AND CONSULTING AGENCIES - FOR PUBLIC EMPLOYERS

8:59-12.1 General provisions

(a) Consultants who conduct and consulting agencies which provide the Right to Know education and training program to a public employer shall possess a current certification, in good standing, issued by the Department of Health and Senior Services.

(b) This subchapter shall affect only those consultants who conduct, and consulting agencies which provide, Right to Know education and training programs for remuneration and shall not include Right to Know education and training programs performed by employees of public agencies for their own or other public agencies for the purpose of compliance with the Right to Know law. However, if public employees conduct such education and training programs outside of their job responsibilities on their own time for remuneration, they must comply with the requirements of this subchapter.

(c) Training conducted by a consultant or provided by a consulting agency that is regulated by this subchapter shall not be limited to initial and annual Right to Know education and training programs but shall also include 30-hour Train-the-Trainer courses or any other courses provided to the public employer to enable the public employer to comply with the Right to Know law.

(d) The Department of Health and Senior Services shall determine if the 30 hours of hazardous substance training required by N.J.A.C. 8:59-1.3 for a technically qualified person are met. Documentation, such as course certificates and course outlines, shall be submitted to the Department with the application for certification in support of the 30 hours of training. Right to Know education and training programs shall cover all topics as specified in N.J.A.C. 8:59-6.

(e) Application for renewal shall be received by the Department 60 days prior to the expiration date of the permanent certification.

(f) Update meetings will be scheduled by the Department of Health and Senior Services in order to ensure uniformity and accuracy in Right to Know education and training programs.

(g) All consultants and consulting agencies shall inform the Department of Health and Senior Services, every month, of upcoming Right to Know education and training programs to be conducted, and shall permit representatives of the Department of Health and Senior Services to attend, evaluate and monitor the Right to Know education and training programs. This notification shall be submitted at least one week prior to the first training session in that month.

(h) Any advertisement by a consultant or consulting agency of their Right to Know certification by the Department of Health and Senior Services shall specify that the certification only applies to New Jersey Right to Know education and training of public employees and shall specify provisional or permanent status.

(i) All consultants and consulting agencies shall cooperate fully with the Department of Health and Senior Services in all matters which pertain to this rule.

8:59-12.2 Process for application

(a) All applications for certification shall be typewritten on an application form issued by the Department and accompanied by the fee specified by N.J.A.C. 8:59-12.9. The fee may be in the form of a check or a money order, made payable to Treasurer, State of New Jersey.

(b) The application by a consultant shall include, but not be limited to, the applicant's name, address, and documentation of education and experience required to qualify as a technically qualified person pursuant to N.J.A.C. 8:59-1.3.

(c) The application by a consulting agency shall include, but not be limited to, the applicant's name and address as well as class outlines, teaching methods, and evaluation tools.

(d) All Right to Know education and training programs provided to or conducted on behalf of public employers shall conform to the requirements of N.J.A.C. 8:59-6.

(e) Applicants shall, by signature on the application form, attest to the accuracy of the information submitted.

8:59-12.3 Provisional certification of consultants

(a) An applicant for certification as a consultant shall submit a completed application form and appropriate fee, as required in N.J.A.C. 8:59-12.2, and written documentation of the possession of education and experience as specified in the definition of a technically qualified person at N.J.A.C. 8:59-1.3. Documentation of a degree shall include a transcript. Documentation of 30 hours of hazardous substance training shall include the number of hours for each course, a copy of the certificate of completion, and a copy of the course outline. Documentation of the methods used to develop the applicant's understanding of health risks associated with exposure to hazardous substances, as defined in N.J.A.C. 8:59-1.3 shall also be submitted. This understanding may be demonstrated by certain courses taken in college, post-graduate courses, hazardous materials and other training programs attended, other certifications and degrees received, work experiences, etc. Certified Industrial Hygienists need only submit proof of current certification with their application and fee.

(b) Provisional certification of consultants shall be granted upon the submission of the above documents and the Department's review and approval of same, and shall be effective until certification is granted or denied. However, if the Department does not receive notification of Right to Know education and training programs being conducted by

the consultant for two years, provisional certification shall expire.

8:59-12.4 Certification of consultants

(a) In order to secure certification, a consultant shall possess a current provisional certification, shall demonstrate, during one or more Right to Know education and training programs, the knowledge, skills and ability to effectively convey the information required by N.J.A.C. 8:59-6 to employees participating in the program, and shall provide all documentation required by N.J.A.C. 8:59-6 to the public employer.

(b) Consultants shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

(c) Certification shall be effective for two years. At the end of two years from the date of issuance of the certification, the consultant must renew the certification.

8:59-12.5 Renewal of certification of consultants

(a) An applicant for renewal of certification as a consultant shall submit the following to the Department 60 days prior to the expiration of the certification:

1. A completed application form as specified by N.J.A.C. 8:59-12.2;
2. A declaration of any additions, deletions or changes occurring since the previous application; and
3. The fee specified by N.J.A.C. 8:59-12.9.

(b) An applicant for renewal of certification as a consultant shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

8:59-12.6 Provisional certification of consulting agencies

(a) An applicant for certification as a consulting agency shall submit the completed application form and appropriate fee required in N.J.A.C. 8:59-12.2, a list of any consultants who will conduct the Right to Know education and training programs for the agency and the status of the consultants' provisional or permanent certification.

(b) The applicant shall submit copies of teaching materials and methods which cover the material to be presented by the consultant as required by N.J.A.C. 8:59-6. Documentation of the education and training program such as lesson plans, class outlines, methods of employee evaluation, sample attendance sheet, and course evaluation forms required by N.J.A.C. 8:59-6 must also be submitted.

(c) Provisional certification of consulting agencies shall be granted upon the submission of the documents in (a) and (b) above and the Department's review and approval of same, and shall be effective until certification is granted or denied. However, if the Department does not receive notification of Right to Know education and training programs being conducted by the consulting agency for two years, provisional certification shall expire.

8:59-12.7 Certification of consulting agencies

(a) In order to secure certification, a consulting agency shall possess a current provisional certification as a consulting agency, demonstrate, during one or more Right to Know education and training programs, that the program's contents contain the information required by N.J.A.C. 8:59-6 and the instructors possess the knowledge, skills and ability to effectively convey the information to the employees participating in the program, and that all documentation required by N.J.A.C. 8:59-6 has been provided to the public employer.

(b) Consulting agencies shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

(c) Certification shall be effective for two years. At the end of two years from the date of certification, the consulting agency must renew the certification.

8:59-12.8 Renewal of certification of consulting agencies

(a) An applicant for renewal of certification as a consulting agency shall submit the following to the Department 60 days prior to the expiration of the certification:

1. A completed application form as specified by N.J.A.C. 8:59-12.2;
2. A declaration of any additions, deletions or changes occurring since the previous application; and
3. The fee specified by N.J.A.C. 8:59-12.9.

(b) An applicant for certification renewal as a consulting agency shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

8:59-12.9 Fees

(a) Fees for certification and renewal shall be submitted with the application and shall be non-refundable.

(b) Fees for an individual consultant shall be as follows:

1. Certification application-\$200.00; and
2. Renewal of certification-\$100.00.

(c) Fees for a consulting agency shall be as follows:

1. Certification application-\$500.00; and
2. Renewal of certification-\$200.00.

(d) For a person applying for certification or renewal as both a consultant and a consulting agency, the fees charged in accordance with (b) and (c) above shall not exceed \$500.00.

8:59-12.10 Rejection of applications

(a) An application from an individual consultant or consulting agency may be rejected by the Department if the application does not meet the requirements of N.J.A.C. 8:59-12.

(b) Rejection shall be based on deficiencies in documentation of the requirements of N.J.A.C. 8:59-1.3, 6, and 12. The Department retains the right to request supplemental information to the application.

(c) Any rejected application may be resubmitted with additional information within a year of receipt of the original application without additional fees incurred.

(d) If an application is rejected three times, the consultant or consulting agency may exercise the right to an informal hearing, as specified in N.J.A.C. 8:59-12.12.

8:59-12.11 Suspension or revocation of certification

(a) A consultant may have his or her certification suspended or revoked for:

1. Incompetence;
2. Failure to adequately present either the topics set forth in N.J.A.C. 8:59-6, or any other materials required by the Department of Health and Senior Services pursuant to N.J.A.C. 8:59-6.3(c);
3. Submitting false information on an application;

4. Failure to comply with the rules promulgated under N.J.A.C. 8:59; or

5. Any violations of N.J.S.A. 34:5A-1 and 34:5A-13, and any rules adopted pursuant to the law.

(b) A consulting agency may have its certification suspended or revoked for:

1. Failure to adequately present either the topics set forth in N.J.A.C. 8:59-6, or to present any other materials required by the Department of Health and Senior Services pursuant to N.J.A.C. 8:59-6.3(c);

2. Submitting false information on an application:

3. Failure to comply with the rules promulgated under N.J.A.C. 8:59; or

4. Any violations of N.J.S.A. 34:5A-1, 34:5A-13, and any rules adopted pursuant to the law.

(c) A consultant whose provisional certification or certification is suspended or revoked may not reapply for provisional certification until six months have elapsed after the date of suspension or revocation. When reapplying for provisional certification, the consultant shall present documentation of having taken appropriate courses to develop appropriate knowledge in the areas in which they were found to be deficient. The fee for initial certification application shall apply. If provisional certification is granted, it shall be considered probationary provisional certification and all training conducted by the consultant shall be done under the supervision of the Department of Health and Senior Services.

(d) A consulting agency whose provisional certification or certification is suspended or revoked may not reapply for provisional certification until six months have elapsed after the date of suspension or revocation. When reapplying for provisional certification, the consulting agency shall present documentation that its consultant trainers have taken appropriate courses to develop appropriate knowledge in the areas in which they were found to be deficient. The fee for initial certification application shall apply. If provisional certification is granted, it shall be considered probationary provisional certification and all training conducted by the consulting agency's trainers shall be done under the supervision of the Department of Health and Senior Services.

8:59-12.12 Hearings for consultants and consulting agencies when certification has been denied, revoked or suspended

(a) When the Commissioner of the Department of Health and Senior Services proposes to deny an application for certification, or revoke or suspend a certification, the consultant or consulting agency shall have the right to an informal hearing under (b) below or a formal hearing under (c) below or both.

(b) An informal hearing before the Commissioner of the Department of Health and Senior Services or his or her designee may be held provided a written request is submitted within 20 days after the notice has been received that the Commissioner proposes to deny an application for certification, or to revoke or suspend a certification. When the hearing is held before the Commissioner or his or her designee, the Commissioner or his or her designee shall state his or her findings and conclusions in writing and transmit a copy to the consultant or consulting agency.

(c) A formal hearing before the Office of Administrative Law may be held provided a written request is submitted by the applicant within 20 days after the notice has been received that the Commissioner of the Department of Health and Senior Services proposes to deny an application for certification, or to revoke or suspend a certification, pursuant to N.J.S.A. 34:5A-31. The procedures governing all formal hearings shall be in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 34:5A-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1.

